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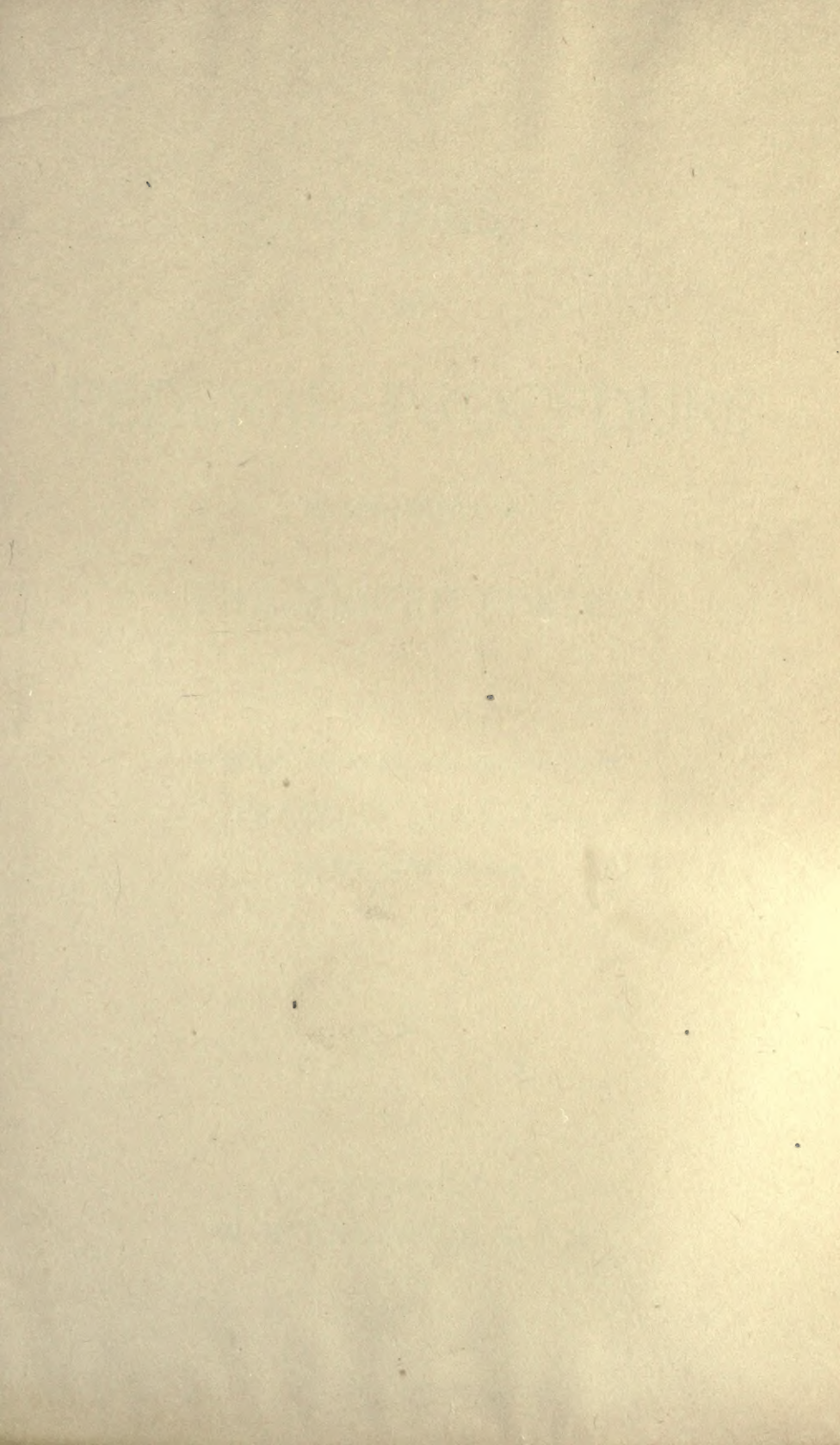


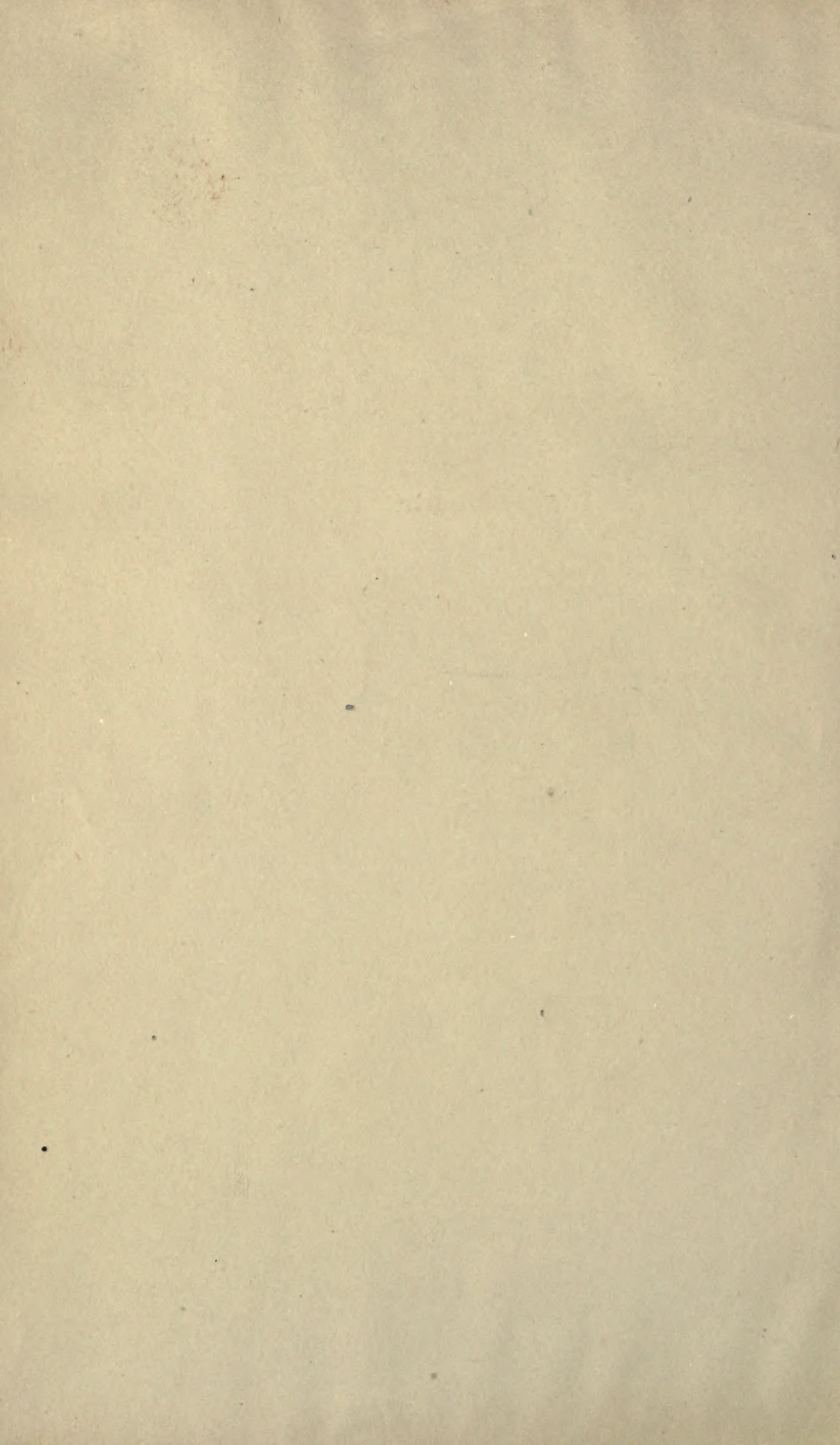
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FORMS
OF
FEDERAL PROCEDURE
IN THE COURTS OF
THE UNITED STATES

COMPILED, ARRANGED, AND ANNOTATED BY

FRANK O. LOVELAND

OF THE CINCINNATI BAR



CINCINNATI, O.
W. H. ANDERSON & CO.

1894.

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1894

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TO MY FATHER,

DAVID ANDREW LOVELAND,

THIS BOOK IS DEDICATED AS A TOKEN OF FILIAL LOVE
AND AFFECTION.

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PREFACE.

THE object of this book is to provide the profession with practical forms, as a companion volume to the many Treatises on Federal Practice. A large number of these forms were taken directly from the record of causes in different federal courts, and have been thoroughly tested and approved. In most instances reference is made in the notes to the cause from which the form is taken.

The forms are intended merely as models to guide the intelligent attorney in preparing pleadings for particular cases, and must necessarily be adapted to the varying conditions of such cases as they arise. The annotations following the forms refer to authorities which will aid in the preparation of such pleadings.

I have received valuable assistance and suggestions in the different departments of practice covered by this volume from Mr. Henry Hooper, Assistant District Attorney for the Southern District of Ohio, and Hon. Judson Harmon, of Cincinnati. I wish especially to acknowledge the kindness, encouragement, and assistance extended me by General B. R. Cowen, Clerk of the United States Courts at Cincinnati, and Mr. Robert C. Georgi, Deputy Clerk, and Mr. Boyd E. Dilley, Deputy Clerk of the United States Circuit Courts of Appeals for the Sixth Circuit.

FRANK O. LOVELAND.

Cincinnati, May, 1894.

FORMS OF FEDERAL PROCEDURE

AT LAW.

No. 1.

Caption.

The District [*or*, Circuit] Court of the United States
for the — District of —.

A. B., Plaintiff, }
 vs. }
C. D., Defendant. }

At Law.
No. —.
[*Name of Action.*]

[*Name of Pleading.*]

No. 2.

Commencement of Declaration (1) by an Individual against an Individual.

[*Caption.*]

A. B., of —, state of —, who is a citizen of the said state of —, and of the United States, plaintiff in this suit, by R. X., his attorney, complains of C. D., of —, who is a citizen of said state of —, and an inhabitant (2) of the — district of — aforesaid, and says:

(1) "Petition" or "Complaint" according to the practice in the state where the action is commenced.

(2) See Act of March 3, 1887, as amended in 1888, 25 St. at L., p. 433, clause 4; Desty's Fed. Proc., Sec. 87.

No. 3.**Commencement of Declaration (1) by a Corporation
against a Corporation.**

[*Caption.*]

The A. B. Co., a corporation organized and existing under the laws of the state of —, and a citizen of said state, plaintiff in this suit, complains of The C. D. Co., a corporation organized and existing under the laws of the state of —, and a citizen of said state, and an inhabitant (1) of the — district of — aforesaid, and says:

(1) See notes to No. 2.

No. 4.**Commencement of Declaration (1) by a Copartnership
against a Copartnership.**

[*Caption.*]

A. B. and F. L., citizens of the state of —, copartners, doing business under the firm name and style of A. B. & Co., at —, in the state of —, plaintiffs in this suit, complain of C. D., B. R., and A. S., copartners, doing business under the firm name and style of C. D. & Co., at —, in the state of —, all of whom are citizens of the said State of —, and inhabitants (1) of the — district of — aforesaid, and say:

1) See notes to No. 2.

No. 5.**Commencement of Declaration (1) by an Alien against
a Citizen of the United States.**

[*Caption.*]

A. B., of —, who is an alien, a subject of the emperor [or, king, or queen, or citizen of the republic] of —, and plaintiff in this suit, complains of C. D., of —, who is a citizen of the state of —, and an inhabitant (1) of the — district of —, and says:

(1) See notes to No. 2.

No. 6.**Commencement of Declaration (1) by the United States.**

[Caption.]

The United States of America, plaintiffs in this suit, by J. H., their attorney in and for the — district of —, complain of C. D., of —, a citizen of the state of —, and an inhabitant (1) of the — district of — aforesaid, and say:

(1) See notes to No. 2.

No. 7.**As to Pleadings in Suits at Law.**

In suits at law in the district and circuit courts of the United States the pleadings conform as near as may be to the pleadings in like causes in the courts of record in the states within which such federal court is held, except in those particulars which are regulated by federal statutes. It would be impossible in this book to give the forms required in the various states for the different actions at law. The pleader is therefore referred for forms of pleading in suits at law in the federal courts to the forms used in the state courts in the several federal districts.

Section 914 of the Revised Statutes of the United States provides that "the practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such circuit or district courts are held, any rule of court to the contrary notwithstanding." See Desty's Fed. Proc., Sec. 436, and cases there cited; and Foster's Fed. Prac. (2d ed.), Sec. 360, *et seq.*; R. S., Sec. 914; and for a full citation of authorities illustrating the above consult Gould and Tucker's notes on the Revised Statutes, p. 285, *et seq.*

No. 8.**Application for Review and Reversal of Decisions of the Board of General Appraisers under the Customs Law.**

Circuit Court of the United States
for the ——— District of ———.

In re Application of the A. B. Company.

The A. B. Co., a corporation organized and existing under the laws of the state of ———, applies for a review of the following decisions of the board of general appraisers as to the construction of the law and the facts respecting the classification of merchandise imported by your petitioner in bond to ———, and the rate of duty imposed thereon under such classification; said decisions having been made the ——— day of ———, 1893.

[*Set forth the entries in full, as, Entry No. 61, dated February 4, 1893; Steamer Russia; liquidated February 6, 1893; Protest No. 72; Department No. 12681 B. The amount of the erroneous assessment is \$9.90.*]

The collector assessed duties against your petitioner upon the actual market value and wholesale price of all of said merchandise as bought and sold in usual quantities at the time of its exportation to the United States in the principal markets of the country from which imported, in the condition in which said merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale, and also upon the value of all crates, cases, cartons, boxes, sacks, and coverings of every kind, and upon the value of all other costs, charges, and expenses incident to placing said merchandise in condition, packed ready for shipment to the United States.

The collector, in addition to said assessment on the value of said goods as aforesaid, and on the cost of packing them for shipment, also assessed and required your petitioner to pay duties upon the cost paid by your petitioner for placing upon and about said merchandise certain tickets, labels,

marks, and devices, which were mere trademarks and labels which were no part of the actual market value or wholesale price of said merchandise as bought and sold in usual quantities at the time of exportation to the United States at the principal markets of the country from whence imported in the condition in which such merchandise is there bought and sold for exportation to the United States, or consigned to the United States for sale; which were no part of the crates, cases, cartons, boxes, sacks, or coverings of any kind, or of any other costs, charges, or expenses incident to placing the merchandise in condition packed ready for shipment to the United States; which were not merchandise, which were of no intrinsic commercial value, and which were not dutiable under Section 19 of the Act approved June 10, 1890, entitled "An Act to Simplify the Laws in Relation to the Collection of the Revenues"; nor otherwise dutiable.

The collector erred in making said assessment, and the General Appraisers erred in sustaining them, to the amounts indicated in this petition with respect to each of said entries.

Wherefore your petitioner prays that said decisions of the Board of General Appraisers may be reviewed and reversed; that your petitioner may recover said several sums illegally assessed against it, as hereinbefore stated, and its costs, and that it may have all other relief to which it may be entitled.

X. & X.,

Attorneys for The A. B. Co.

No. 9.

Declaration for Infringement of a Patent.

See under title "Patents."

No. 10.**Declaration for Infringement of a Copyright or Trademark.**

Consult form of Declaration for Infringement of a Patent under title "Patents," and Bill in Equity under title "Copyrights and Trademarks."

No. 11.**Appearance.**

[*Caption.*]

To the Clerk of said Court:

• Please enter my appearance as attorney for the defendant in the above entitled cause. R. Y.,

Dated ———.

Attorney for Defendant.

No. 12.**Appearance for Special Pleading.**

[*Caption.*]

Now comes the defendant by his counsel and enters his appearance herein for the purpose of pleading to the jurisdiction of this court [*or as may be*] and for no other purpose.

Y. & Y.,

Dated ———.

Attorneys for Defendant.

No. 13.**Appearance by Defendant in Person (1).**

I promise to appear at the return of the within writ, and pray the court to enter my appearance accordingly.

C. D.,

Dated ———.

Defendant.

(1) This appearance is usually indorsed on the writ.

No. 14.**Notice to Plead.**[*Caption.*]

Y. & Y.,

Attorneys for Defendant.

Please take notice that a rule has been entered in this cause with the clerk of this court, at his office in the city of —, requiring the defendant to plead to the petition [*or*, declaration, etc.] filed in this cause within twenty days after service of a copy thereof, with which you are hereby served, and notice of rule or judgment.

X. & X.,

Dated at —.

Attorneys for Plaintiff.

Service accepted this — day of —, 1894.

Y. & Y.,

Attorneys for Defendant.

No. 15.**Notice to Declare.**[*Caption.*]

X. & X.,

Attorneys for Plaintiff.

Please take notice that the plaintiff in this cause is hereby required to declare within — days after the service of this notice, or that judgment of discontinuance will be entered against him.

Y. & Y.,

Dated —.

Attorneys for Defendant.

Service accepted, etc. [*as in No. 14*].**No. 16.****Notice of Motion for Leave to Amend.**[*Caption.*]

Y. & Y.,

Attorneys for Defendant [*or*, Plaintiff].

Please take notice that we shall make a motion before the judge of the district [*or*, circuit] court of the United States for

the — district of —, on the — day of —, 1894, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, that the plaintiff [*or*, defendant] in this cause have leave to amend the declaration [*or*, answer, *or*, etc.] filed herein, on such terms as the said court may direct; a copy of which amendment and affidavits in support thereof, which will be presented to the court at such hearing, are herewith served upon you.

X. & X.,

Attorneys for Plaintiff [*or*, Defendant].

Dated —.

Service accepted, etc. [*as in No. 14*].

No. 17.

Demand of Oyer.

[*Caption.*]

Y. & Y.,

Attorneys for Defendant [*or*, Plaintiff.]

The plaintiff [*or*, defendant] demands oyer and copy of contract mentioned in defendant's answer in this cause [*or specify the document desired, and the pleading in which it is mentioned*].

X. & X.,

Attorneys for Plaintiff [*or*, Defendant].

Dated —.

Service accepted, etc. [*as in No. 14*].

No. 18.

Notice to Reply.

[*Caption.*]

X. & X.,

Attorneys for Plaintiff.

Please take notice that the plaintiff in this cause is hereby required to reply to the plea [*or*, pleas] filed herein, with a copy of which you are hereby served, within — days after

service of a copy thereof, and of this notice, or judgment will be entered against him.

X. & X.,

Attorneys for Defendant.

Dated —.

Service accepted, etc. [*as in No. 14*].

No. 19.

Notice of Trial.

[*Caption.*]

Y. & Y.,

Attorneys for Defendant [*or*, Plaintiff].

Please take notice that the above cause will be brought to trial at the next term of the district [*or*, circuit] court of the United States for the — district of —, to be held at the United States court-rooms in the city of —, before the judge of the said court on the — day of —, at ten o'clock in the forenoon of that day.

X. & X.,

Attorneys for Plaintiff [*or*, Defendant].

Dated —.

Service accepted, etc. [*as in No. 14*].

No. 20.

Subpœna of Witness to Testify before a Commissioner.

See form under title "Criminal Proceedings."

No. 21.

Habeas Corpus ad Testificandum.

For form of Affidavit and Writ see forms under title "Criminal Proceedings."

No. 22.**Notice for Examination of Witness de bene esse.**

[Caption.]

Y. & Y.,

Attorneys for Defendant [*or*, Plaintiff].

Please take notice that the deposition *de bene esse* of G. H., (1) of —, who resides more than one hundred miles from —, where the court at which the above entitled cause will be tried, is to be held [*or state, according to the fact, the reason for taking the deposition, as*, is bound on a voyage to sea, etc.], will be taken to be read in evidence at the trial of the said cause on the part of the plaintiff [*or*, defendant] herein, before J. N., United States commissioner [*or*, notary public, etc.], at his office, number —, — street, in the city of —, on the — day of —, beginning at ten o'clock in the forenoon of that day, and continuing from day to day until completed.

You are requested to be present and cross-examine, if you desire to do so.

X. & X.,

Attorneys for Plaintiff [*or*, Defendant].

Dated —.

Service accepted, etc. [*as in No. 14*].

(1) The names of all the witnesses to be examined should be given.

No. 23.**Subpœna of Witness de bene esse.**

[Caption.]

To G. H.

Please take notice that you are required to appear before me at my office, number —, — street, in the city of —, on the — day of —, at ten o'clock in the forenoon of that day, and there to be examined *de bene esse* on the part of the — in the above entitled cause. You are required to be present to testify at the time and place above mentioned.

Witness my hand and official seal at —, this — day of —.

[Seal.]

J. N.,

[Official title.]

No. 24.**Caption for Depositions de bene esse.**

The United States of America,
—— District of ——,
State of ——, County of ——, ss.

The examination of witnesses *de bene esse* beginning on the —— day of ——, on behalf of the ——, before me, J. N., (*official title*), at my office at number ——, —— street, in the city of ——, in the said district of ——, in the state aforesaid, in a certain suit now depending and undetermined in the district [*or, circuit*] court of the United States for the —— district of —— [*state place the court is held*], in the district aforesaid, wherein A. B. is plaintiff, and C. D. is defendant.

G. H., a witness produced on behalf of the plaintiff [*or, defendant*], being first duly sworn, deposes and says as follows:

My name is G. H., age ——, and I reside at and am employed, etc. [*Continue with the deposition, which the witness must sign.*]

No. 25.**Certificate at Close of Depositions.**

State of ——,
County of ——, ss.

I, J. N., a notary public in and for said county and state [*or, United States commissioner, or as may be*], duly commissioned and qualified, and authorized to administer oaths, and to take and certify depositions, do hereby certify that, pursuant to the annexed notice issued and served in the civil cause depending in the circuit court of the United States for the —— district of ——, wherein A. B. is plaintiff, and C. D. defendant, I was attended at my office, No. ——, —— street, in ——, by R. X., counsel for said plaintiff, as also by R. Y., counsel for defendant, on the several days and dates hereinbefore stated; that the aforenamed witnesses, E. F., G. H.,

and J. S., who were of sound mind and lawful age, and were by me first carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth; and they thereupon testified as is above shown, and that the depositions by them subscribed, as above set forth, were reduced to writing in the presence of the witnesses themselves, and from the statements of them, and were subscribed by the said witnesses in my presence, and were taken at the place in the annexed notice specified and at the times as set forth, adjournments being had or taken from day to day as provided for in said notice, and that all was so done, written and signed in the presence of said counsel for said plaintiff and defendant. I further certify that the reason for taking said depositions was, and is, and the fact was, and is, that all of the deponents live at —, more than one hundred miles from the place where the said civil issue is appointed by law to be tried; that I am neither of counsel nor attorney to either of the parties to said suit, nor interested in the event of said cause, and that it being impracticable for me to deliver said depositions and the exhibits thereto attached with my own hand into the court for which they were taken, I have retained the same for the purpose of being sealed up and directed with my own hand, and speedily and safely transmitted to the said court for which it was taken, and to remain under my seal until there opened.

As witness my hand and seal as such examiner [*or as may be*] at —, on this — day of —, 1894.

[*Seal.*]

J. N.,
[*Official title.*]

No. 26.

Transmission of Depositions.

The depositions should be sealed and transmitted by the officer taking them to the clerk of the court in which the suit is pending. The following form may be used to indorse the

enclosure within which the depositions are transmitted to the clerk.

<div style="display: flex; justify-content: space-between;"> <div style="width: 80%;"> <p>In the — Court of the United States for the — District of —.</p> <div style="display: flex; align-items: center; margin-top: 10px;"> <div style="text-align: center; margin-right: 10px;"> <p>A. B., Plaintiff.</p> </div> <div style="font-size: 2em; margin: 0 10px;">}</div> <div style="text-align: center;"> <p>C. D., Defendant.</p> </div> </div> <p>Depositions of G. H., I. J. and L. M., witnesses on behalf of the — in the above entitled cause, taken before me, and by me sealed and transmitted to the clerk of the above named court.</p> </div> <div style="width: 15%; text-align: center; border-left: 1px solid black; padding-left: 5px;"> <p>J. N., [Official Title.]</p> </div> </div>	<p>To the Clerk of the Dis- trict [<i>or</i>, Circuit] Court, Cincinnati, Ohio.</p>
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No. 27.

Notice of Taxation of Costs.

[*Caption.*]

Y. & Y.,

Attorneys for Defendant [*or*, Plaintiff].

Please take notice that the bill of costs in the above entitled cause will be taxed before the clerk of said court at his office at —, in the city of —, on the — day of —, at ten o'clock in the forenoon of that day as follows, to wit:

Marshal's fees,	\$ —.
Clerk's fees,	\$ —.
Commissioner's fees,	\$ —.
Attorney's Fees,	\$ —.

X. & X.,

Attorneys for Plaintiff [*or*, Defendant].

Dated —.

Service accepted, etc. [*as in No. 14*].

No. 28.**Cost Bill.**

A. B., Plaintiff, } District [*or*, circuit] court of the United
vs. States for the — district of —.
C. D., Defendant. } No. —.

CLERK'S FEES (1).	@	PLAINTIFF.		DEFEND'T.	
Entering appearance of — parties, .	.15				
Drawing, filing and ack. cost bond, .	. .				
Issuing—process (except for witness),	1.00				
Indorsing cause of action on — writs,	.15				
Issuing — subpoenas for witnesses, .	.25				
Entering marshal's return on — writs;					
— folios, . . . . .	.15				
Filing — papers, . . . . .	.10				
Indorsing certificate of opening —					
depositions, . . . . .	.15				
Copying — folios, . . . . .	.10				
Certificate and seal to — copies, . .	.35				
Taking — affidavits, . . . . .	.10				
Certificate and seal thereto, . . . .	.35				
Indorsing papers; — folios, . . . .	.15				
Entering — folios on journal, . . . .	.15				
Drawing — bonds; — folios, . . . .	.15				
Taking — ack's under seal, . . . .	.45				
Swearing — sureties to bond, . . . .	.10				
Certificate and seal thereto, . . . .	.35				
Swearing witnesses — to testify, . .	.10				
Swearing — witnesses to att. and					
travel, . . . . .	.10				
Entering — folios claims of witnesses,	.15				
Issuing — certificates of attendance, .	.10				
Entering — folios complete record, .	.15				
Making dockets, indexes, etc., \$1.00,					
\$2.00, \$3.00, . . . . .	. .			
Commission on amount received, \$ . .	. .			
Making copy of cost bill; — folios, .	.10				
GENERAL STATEMENT.					
Clerk, . . . . .	. .			
Marshal, . . . . .	. .			
Docket fee, . . . . .	. .			
Attorney's fees on depositions, . . . .	. .			
Plaintiff's notary's fees on depositions,	. .				
Defendant's notary's fees on deposi-					
tions, . . . . .	. .			
Defendant's witnesses' fees, . . . . .	. .			
Plaintiff's witnesses' fees, . . . . .	. .			
TOTAL, . . . . .	. .			

(1) See R. S. Sec. 828.

MISCELLANEOUS WRITS, ETC., IN SUITS AT LAW AND IN EQUITY.

No. 29.

Summons at Law.

The United States of America,
 — District of —, ss.

The President of the United States of America to the Marshal of the — District of —, Greeting :

You are hereby commanded to summon C. D., citizen of and resident in the state of —, if he be found in your district, to be and appear in the district [*or*, circuit] court of the United States for the — district of — aforesaid, at —, on the — Tuesday in the month of —, 1894, to answer unto A. B., citizen of and resident in the state of —, in civil action for [*as may be*] —. And have you then and there this writ.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 30.

Teste for Writs Issuing from a District Court (1).

Witness the Honorable G. N., Judge of the district court of the United States, this — day of —, 1894, and in the 118th year of the Independence of the United States of America.

[*Seal.*]

Attest: B. R.,
 Clerk.

(1) See R. S., Sec. 911; Desty's Fed. Proc., Sec. 433, and cases there cited; Foster's Fed. Prac., Secs. 361 and 484, and cases cited in notes; also Gould and Tucker's Notes on the Revised Statutes, pages 283 and 287.

No. 31.

Teste for Writs Issuing from the Supreme Court, a Circuit Court of Appeals, or a Circuit Court (1).

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this — day of [Seal.] —, 1894, and in the 118th year of the Independence of the United States of America.

Attest: B. R.,
Clerk.

(1) See note to No. 30.

No. 32.

Return of Writ by Marshal (1).

Received this writ on the — day of —, 1894, and on the — day of — 1894, I served the same by handing a true copy thereof, with the indorsement thereon, to said C. D. personally [*or say*, I left a like copy thereof, with the indorsement thereon, with an adult person, who is a member [*or*, resident] in the family of C. D., at the usual place of residence of said C. D.].

H. C.,

United States Marshal for the
— district of —.

FEES.

Copy, —
Mileage, —
Service, —
\$ —

(1) See 13th Rule in Equity.

No. 33.

Subpœna in Chancery.

The United States of America,
— District of —, ss.

The President of the United States of America to the
Marshal of the — district of —, Greeting:

You are hereby commanded to summon C. D., citizen of
and resident in the state of —, if he be found in your dis-

trict, to be and appear in the circuit court of the United States for the — district of — aforesaid, at —, on the first Monday in — next, to answer a certain bill in chancery, filed and exhibited in said court, against C. D., by A. B., citizen of and resident in the state of —. Hereof you are not to fail, under the penalty of the law thence ensuing. And have you then and there this writ.

[*Add teste. See No. 31.*]

MEMORANDUM (1).

The said defendant is required to enter his appearance in this suit in the clerk's office of said court on or before the first Monday of —, 1894, otherwise the said bill may be taken *pro confesso*.

B. R.,
Clerk.

(1) See 12th Rule in Equity.

No. 34.

Capias ad Respondendum.

See form under title "Criminal Proceedings."

No. 35.

Recognizance for Appearance.

See form under title "Criminal Proceedings."

No. 36.

Cost Bond.

District [*or*, Circuit] Court of the United States, for the
— District of —, ss.

A. B., Plaintiff,	} No. —.
<i>vs.</i>	
C. D., Defendant.	} Cost Bond.

I hereby acknowledge myself security for costs in the above entitled cause.

E. F. [*Seal.*]

Taken and acknowledged before me this — day of —, 1894. B. R.,

[Seal.] Clerk of District [*or*, Circuit] Court of the United States, — district of —.

I, E. F., a resident of said district, do solemnly swear, that after paying my just debts and liabilities I am worth — dollars, in real estate within the jurisdiction of this court, and subject to execution, levy and sale.

E. F.

Sworn to and subscribed before me this — day of 1894. B. R.,

[Seal.] Clerk of the District [*or*, Circuit] Court of the United States for the — district of —.

No. 37.

Notice to Surety.

The United States of America,

— District of —, ss.

A. B., Plaintiff, } In the District [*or*, Circuit] Court of the
vs. } United States
 C. D., Defendant. } for the — district of —.

To E. F., security for costs in the above entitled cause:

This is to give you notice, that on —, the — day of — 1894, at 10 o'clock in the morning, or as soon thereafter as counsel can be heard, the said circuit court will be moved to enter up judgment in the name of said defendant, C. D., against you as security for costs in the above entitled cause for — dollars and — cents, the amount of costs adjudged against the said C. D. at the — term of said court, 1894, and still remaining due and unpaid; also for the interest thereon, and the costs of increase that may be found due, including the costs of this proceeding.

In witness whereof, I have hereunto set my hand and [Seal.] affixed the seal of said court at — this — day of —, 1894. B. R.,
 Clerk.

No. 38.

Dedimus Potestatem (1).

The United States of America,

— District of —, ss.

The President of the United States of America to J. N.,
Greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents do give you [*or*, any two or more of you] full power and authority diligently to examine upon his [*or*, their respective] corporal oath [*or*, affirmation] before you to be taken, G. H. as witness on the part of plaintiff [*or*, defendant] in a certain cause now pending undetermined in the circuit court of the United States of America for the — district of — in the — circuit, wherein A. B. is plaintiff, and C. D. is defendant, touching the premises [*or, if interrogatories are annexed*, on the interrogatories hereunto annexed].

And we do further empower you [*or*, any two or more of you] to examine on the same behalf, and in like manner, any other person or persons who may be produced as witnesses before you.

And we do hereby require you [and any two or more of you] before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to B. R., clerk of the circuit court of the United States, — district of —, city of —; and that you return the same when executed as above directed, annexed to this writ, with the title of the cause indorsed on the envelope of the commission, into the said circuit court, before the judge [*or*, judges] thereof, with all convenient speed.

[*Add teste. See No. 31.*]

(1) See R. S., Sec. 866; Desty's Fed. Proc., Sec. 385.

No. 39.**Subpœna for Witness.**

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal of the — District of —, Greeting :

We command you to summon G. H., of —, county of —, district and state aforesaid, if he be found in your bailiwick, to be and appear before [*name of court or examiner, or as many as may be*], at —, on the — day of —, 1894, at 10 o'clock a. m., to give evidence on behalf of the plaintiff [*or, defendant*] in a suit pending in the district [*or, circuit*] court of the United States for the — district of —, wherein A. B. is plaintiff, and C. D. is defendant.

Hereof fail not; and of this writ make legal service and due return.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 40.**Subpœna Duces Tecum.**

The United States of America,

— District of —, ss.

The President of the United States of America to E. F. and G. H., Greeting :

We command and strictly enjoin you and each of you, that, laying aside all manner of business and excuses whatsoever, you and each of you be and appear in your proper person before our district [*or, circuit*] court, [*or such officer as may be named here*] on the — day of — next, at 10 o'clock a. m., and also that you bring with you and produce at the time and place aforesaid [*name papers or books or whatever is to be produced by witness*] then and there to testify, what you and each of you may know, in a certain action, pending in said court, wherein A. B. is plaintiff, and C. D. is

defendant, [*or*, before J. N., U. S. Commissioner, *etc.*, *or as may be*,] and this you do under the penalty of the law.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 41.

Writ of Attachment against Witness for Disobeying Subpœna (1).

The President of the United States of America to the Marshal of the — district of —.

You are hereby commanded to attach G. H., if he may be found in your district, and bring him on the — day of — [*or*, forthwith] personally before the judge of the district [*or*, circuit] court of the United States for the — district of —, held at the United States court-rooms in the city of —, in the said district, to answer for certain trespasses and contempts in not obeying our writ of subpœna directed to him and duly served on him, commanding him to appear before the said district [*or*, circuit] court at —, on —, to testify all and singular those things which he knows in a certain cause depending in the said court between A. B., plaintiff, and C. D., defendant; and you are further commanded to detain him in your custody until he shall be discharged by the said court, and have you then and there this writ.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

(1) For form of Rule to Show Cause why a Writ of Attachment should not Issue, consult No. 49.

No. 42.**Order for the Delivery of Personal Property.**

The United States of America,

— District of —, ss.

Circuit Court of the United States.

A. B., Plaintiff,

vs.

C. D., Defendant.

} At Law.

No. —.

The President of the United States of America to the Marshal
of the — district of —, Greeting:

You are commanded to take [*here describe the property to be taken*] from the possession of the defendant, C. D., and deliver the same to the plaintiff, A. B., upon A. B. giving the undertaking required by law.

You will make due return of this order on or before the
— Tuesday of —, 1894.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 43.**Return of Marshal on above Order for the Delivery of Personal Property.**

—, 1894. I have this day executed the foregoing order of delivery, by taking the property therein mentioned; ascertaining by the oaths of E. F. and G. H., two responsible persons, the value thereof, which is — dollars; delivering the same to plaintiff, A. B. having executed to the defendant a written undertaking in the sum of \$—, with S. L. and A.

MARSHAL'S FEES.

Copy
Service
Mileage
Writing bond
Inventory
Writing ap. report
Sum. and swear. ap.
Removing property
Caring for property
Appraisers' fees

L. as sureties; and by serving a copy of this order on C. D., said defendant.

[*See schedule and undertaking hereto attached.*]

H. C.,

United States Marshal for the
— district of —.

No. 44.**Order for Sale.**

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal
of the — District of —.

You are hereby commanded, in pursuance of an order of the district [*or, circuit*] court of the United States, for the — district of — aforesaid, made at the — term thereof, 1894, in the case of A. B. against C. D., to proceed without delay, and cause to be appraised, advertised, and to sell according to law [*here describe the property*], and that your proceedings in the premises you make known to our said district [*or, circuit*] court of the United States, within and for the — district of —, according to law, and have you then and there this writ.

[*Add teste according to court issuing writ. See Nos. 30 and 31.*]

No. 45.**Marshal's Appraisement of Real Estate.**

The United States of America,	} In the district [<i>or, circuit</i>] court.
for the	
— District of —, ss.	} No. —.

A. B., plaintiff, against C. D., defendant.

An appraisement taken at the city of —, in the county of —, and state of —, and within the district aforesaid, on —, the — day of —, 1894, before H. C., marshal of the United States for the — district of —, in obedience to the command of a certain order of sale [*or as may be*], in the above entitled cause issued from the district [*or, circuit*] court of the United States for said — district of —, and to him directed, dated at the city of —, state of —, on the — day of —, 1894.

Pursuant to said order of sale, the said H. C., marshal of the United States for the — district of — aforesaid, did, on the — day of —, 1894, in compliance therewith, and according to the statute in such case made and provided, summon an inquest of three judicious, disinterested freeholders, resident in said district, to wit: E. F., G. H., and I. J., who are duly sworn and charged to appraise at its true value in money the lands and tenements of the said C. D., defendant, described in the words and figures following, to wit: [*Here describe the property.*]

Whereupon the said appraisers, each of whom doth for himself hereby certify that he is a resident freeholder in said district, say, upon their oaths, that the premises hereinbefore described, upon actual view thereof, are of the value of:

First tract, — dollars.

Second tract, — dollars.

Third tract, — dollars.

As a whole, — dollars.

In testimony whereof, as well I, H. C., marshal of the United States for the — district of —, as the inquest aforesaid, have to this appraisement set our hands and seals on the day and year first above written.

H. C., U. S. Marshal — district of —. [*Seal.*]

E. F. [*Seal.*]

G. H. [*Seal.*]

I. J. [*Seal.*]

The United States of America,

— District of —, ss.

I do hereby certify that the above named appraisers were freeholders and residents of said district, and that they were duly summoned and sworn by me, according to law, on the day and year first above written.

H. C.,

United States Marshal for the
— district of —.

No. 46.

Marshal's Report of Sale of Real Estate.

The United States of America,

— District of —.

Received this writ the — day of —, 1894, and, pursuant to its command, the undersigned did, on the — day of —, 1894, on the premises, near the town of —, county of —, state of —, and within the district aforesaid, by the oaths of E. F., G. H., and I. J., three judicious, disinterested freeholders, resident in said district, cause to be appraised at their true value in money the lands and tenements described in said order, to wit: [*Here set forth a full description of lands and tenements.*]

The report of said appraisers is hereto attached, marked "A," and made part hereof. A copy of said appraisement was, by the undersigned, immediately deposited with the clerk of the district [*or, circuit*] court of the United States for the — district of —, to be by him filed in said cause.

Also, notice of the sale of said premises was by the undersigned given in the — [*give name of paper*], a weekly newspaper, published and of general circulation in the county of —, state of —, where said lands are situate, for more than thirty days prior to the day of sale, and appeared in said paper weekly on [*set forth the days*], as will more fully appear by reference to the proof of publication herewith filed, marked "B."

Afterwards, to wit: on the — day of —, 1894, at the court-house, in the town of —, county of —, and state of —, at the hour of one o'clock, solar time, the time and place named in said advertisement of sale, said lands and tenements were by the undersigned offered for sale at public outcry, in the presence and hearing of a number of persons present and having an opportunity of bidding thereat, when came J. S., who bid to pay therefor the sum of — dollars, and said sum being more than two thirds the appraised value

of said premises, and being the highest and best bid offered for said premises, I therefore publicly struck off and sold to the said J. S. the said lands and tenements for the said sum of — dollars, and the undersigned brings said money into court, and awaits its further order in the premises.

H. C.,
United States Marshal for the
— district of —.

No. 47.

Fieri Facias.

The United States of America,
— District of —, ss.

The President of the United States of America to the Marshal
of the — District of —, Greeting:

You are hereby commanded, that of the goods and chattels, and for want thereof, then of the lands and tenements of C. D. in your district, you cause to be made the sum of — dollars damages, and — dollars costs of suit, which, by the judgment of the district [*or*, circuit] court of the United States for the — district of —, at the — term thereof, in the year 1894, A. B. recovered against the said C. D., with interest thereon from the — day of —, 1894, until paid, together with the further sum of — dollars, costs of increase on said judgment; and also the costs that may accrue on this writ.

And have you the said moneys in the said district [*or*, circuit] court, before the judges thereof, at the city of —, in said district, within sixty days from the date of this writ, to be paid to the persons entitled to receive the same. And have you then and there this writ.

[*Add teste according to court issuing the writ. See Nos. 30 and 31.*]

No. 48.**Vendi Exponas.**

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal
of the — district of —, Greeting:

You are hereby commanded to expose to sale the following described — property, viz.: [*Set forth the description*], which, according to command, you have levied on, and which remains in your hands unsold, as you have certified to the judges of the district [*or, circuit*] court of the United States for the — district of — aforesaid, to satisfy a judgment of said court, rendered at the — term thereof, in the year —, in favor of A. B. against C. D. for the sum of — dollars, and — dollars costs of suit, with interest thereon from the — day of —, 1894, until paid, together with the further sum of — dollars, costs of increase on said judgment; and also the costs that may accrue on this writ. And if, in your opinion, the property remaining in your hands, not sold, will be insufficient to satisfy the judgment aforesaid, then you are hereby commanded that you levy the same upon other goods and chattels, lands and tenements, or either, as the law shall permit, being the property of the judgment debtor; which, together with the property on hand not sold as aforesaid, will be sufficient to satisfy the judgment aforesaid. And have you the said moneys in the said district [*or, circuit*] court, before the judges thereof, at the city of —, in said district, on the third Tuesday in the month of — next, to be paid to the persons entitled to receive the same. And have you then and there this writ.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 49.**Rule to Show Cause.**

In the District [*or*, Circuit] Court of the United States,
 — District of —.

A. B., Plaintiff, }
 vs. }
 C. D., Defendant. } No. —.

The President of the United States of America, to C. D.,
 —:

You are hereby cited and admonished to be and appear before our district [*or*, circuit] court of the United States, within and for the — district of —, on —, the — day of —, 1894, at 10 o'clock a. m., to show cause, if any you know or have, why [*here set forth the grounds for the rule, as, you should not be attached for contempt of court in that, etc.*]. And it is ordered that the marshal of this district make legal service and due return of this rule on or before the appearance day above noted.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 50.**Undertaking in Attachment.**

The United States of America,
 — District of —, ss.

Whereas, A. B. has commenced a civil action against C. D. in the district [*or*, circuit] court of the United States for the — district of — to recover the sum of — dollars; and, whereas, the said A. B. has applied to the clerk of said court, by filing the necessary affidavit, for an order of attachment, to be issued in said action, against the said C. D. Now, therefore, we, A. B., E. F., and G. H., hereby undertake to the said C. D. in the sum of — dollars, that the said A. B. shall pay the said C. D. all damages which the

said C. D. may sustain by reason of said attachment if the order should have been wrongfully obtained.

Dated at — this — day of —, 1894.

A. B. [*Seal.*]

E. F. [*Seal.*]

G. H. [*Seal.*]

[*Add acknowledgment and justification of sureties, as in No. 36.*]

No. 51.

Writ of Attachment.

The United States of America,

— District of —, ss.

The President of the United States of America, to the Marshal of the — District of —, Greeting:

Whereas, A. B. has this day, on the necessary affidavit being filed, obtained an order of attachment against C. D. in a certain action of [*name of action*] now pending in the district [*or, circuit*] court of the United States, for the — district of —, wherein the said A. B. is plaintiff, and the said C. D. is defendant, to recover of the said defendant the sum of — dollars.

Now, therefore, you, the said Marshal, are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, or interest in stocks, rights, credits, moneys, and effects of the said C. D., defendant, in your district, not exempt by law from being applied to the plaintiff's claim, or so much thereof as will satisfy to the said plaintiff his claim for — dollars, and one hundred dollars, the probable cost of this action.

And of this order of attachment, and of your proceedings thereon, you will make due return on the — day of —, 1894.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 52.**Writ of Attachment for Contempt.**

The United States of America,

—— District of ——, ss.

The President of the United States of America to the Marshal of the —— District of ——, Greeting:

We command you that you attach C. D. so as to have his body before our district [*or, circuit*] court of the United States, within and for the district aforesaid, at the court rooms in the city of ——, on the —— day of ——, 1894, then and there to answer of a certain contempt by him lately committed against said court, in that [*set forth briefly the grounds for attachment*], and further to do and receive what our said court shall in that behalf consider.

And have you then and there this writ.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 53.**Scire Facias to Revive a Judgment (1).**

The United States of America,

—— District of ——, ss.

The President of the United States to the Marshal of the —— District of ——, Greeting:

Whereas, A. B., citizen of the state of ——, lately in our circuit court of the United States for the —— district of ——, before our judges of our said court at ——, to wit: on the —— day of ——, 18——, by the consideration of our said court, recovered against C. D. a judgment for the sum of —— dollars for his debt, as well as fifty dollars for his costs and charges by him about his suit in that behalf expended, whereof the said defendant is convict, as appears to us of record. And whereas, by the insinuation of the said A. B., we have in our said court understood, that although the

judgment in form aforesaid be given, yet execution thereof still remains to be done, whereof he besought us to grant unto him in his behalf a proper remedy, and we, being willing that what is right and just should be done herein, do command you, the said marshal, that, by good and lawful men of your bailiwick, you give notice to the said C. D. that he be and appear before our judges at —, at our said court, there to be held for the district aforesaid, the — Monday of — next, to show if anything he can say why the said judgment should not be revived, and the lien continued, and why the said plaintiff ought not to have his execution against C. D. for debt, interest and cost aforesaid, according to the force, form and effect of the recovery aforesaid, if he shall think fit. And further to do and receive whatsoever our said court shall then and thereof and concerning him in this behalf consider. And have you then and there the names of those by whom you shall make known to — and this writ.

[*Add teste. See No. 31.*]

(1) As to when this writ may be employed see Foster's Fed. Prac., Sec. 368*b*. The rule of practice is that of the state in which proceedings are had. See *McKnight vs. Craig's Adm.*, 6 Cranch, 183, (187); *Walden vs. Craig, v. 14 Pet.*, 147 (151); *Kenosha, etc., R. R. vs. Sperry*, 3 Biss., 309.

No. 54.

Writ of Seizure.

See under title "Admiralty," which form can be used in revenue cases, with few apparent changes.

No. 55.

Writ in Admiralty.

See under title "Admiralty."

No. 56.**Writ of Venire for Jury.**

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal
of the — district of —, Greeting:

We command you to summon, without delay, [*here state the names and addresses of all the jurors,*] to be and appear before our district [*or, circuit*] court of the United States, within and for the district aforesaid, at the court-rooms in the city of —, on —, the — day of —, 1894, at 10 o'clock a. m., then and there to serve as petit [*or, grand*] jurors for and during the — term, 1894, of said court, and not depart the court without the leave thereof.

Hereof fail not, and have then and there this writ, with your proceedings thereon.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 57.**Writ of Possession or Assistance (1).**

The United States of America,

— District of —, ss.

The President of the United States of America to R. P.,
Special Master Commissioner of the Circuit Court of said
District, Greeting:

Whereas, according to the tenor and true meaning of a decree in equity in a certain cause depending in our circuit court of the United States within and for the district aforesaid, wherein A. B. is plaintiff, and C. D., and others, defendants, it was decreed that C. D. deliver possession to A. B. of the messuage, lands and premises, situate in the township of —, in the county of —, and state of —, and bounded and described as follows: [*set forth description.*]

The whole tract above described being the same premises heretofore conveyed to T. F., and by him conveyed to C. D. by deed dated the — day of —, 1894, and recorded in book —, page —, of said — county records. Yet he, the said C. D., and others, ill-disposed persons, his accomplices, have refused to pay obedience to said decree, and detain and keep possession of the said messuage, lands and premises, in manifest contempt of us, and our said court.

Know ye therefore, that we being willing and desirous that justice should be done to the said A. B. in this behalf, do give unto you full power and authority to place and put the said A. B. and his heirs and assigns, without delay, into the full, peaceable and quiet possession of all and singular the said messuage, lands and premises, with their appurtenances, according to the true intent and meaning of the said decree; and herein you are not in any wise to fail.

[*Add teste. See No. 31.*]

(1) See Foster's Fed. Prac., Sec. 348, 9th Equity Rule and Desty's Fed. Proc., p. 1140.

No. 58.

Writ of Error to the U. S. Supreme Court.

The United States of America, ss.

The President of the United States of America to the Judges of the Circuit Court of the United States for the — district of —, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between A. B., plaintiff, and C. D., defendant, a manifest error has happened, to the great damage of the said A. B. [*or, C. D.*], as by his complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly,

you send the record and proceedings aforesaid, with all things concerning the same, to the supreme court of the United States, together with this writ, so that you may have the same at the city of Washington on the — day of — next (1), in the said supreme court, to be then and there held, that the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done to correct that error, what of right, and according to the laws and customs of the United States, should be done.

[*Add teste. See No. 31.*]

(1) Not exceeding thirty days from day of signing (see 8th U. S. Supreme Court Rule), except where time is extended to sixty days. See 9th U. S. Supreme Court Rule, clause 4.

No. 59.

Citation to Appellee (1).

The United States of America, ss.

To A. B. [*or*, C. D.], Greeting:

Whereas, C. D. [*or*, A. B.], has lately appealed to the supreme court of the United States, from a decree lately rendered in the district [*or*, circuit] court of the United States for the — district of —, made in favor of you, the said A. B. [*or* C. D.], and has filed the security required by law; you are therefore hereby cited to appear before the said supreme court, at the city of Washington, on the — day of — next (2), to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of —, in the — circuit, this — day of —, in the year of our Lord one thousand eight hundred and —.

J. S.,

Judge of the Circuit Court of United States
for — district of —.

(1) See R. S., Sec. 999; Desty's Fed. Proc., Sec. 532; also Act of March 3, 1891, 26 Stat. at L., 826, Sec. 5.

(2) See note to No. 58.

No. 60.**Citation to Defendant in Error (1).**

The United States of America, ss.

To C. D., Greeting :

You are hereby cited and admonished to be and appear at a supreme court of the United States, to be holden at the city of Washington, on the — day of — next (2), pursuant to a writ of error filed in the clerk's office of the district [*or*, circuit] court of the United States for the — district of —, wherein A. B. is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand, etc. [*as in No. 59*].

(1) See note 1 to No. 59.

(2) See note to No. 58.

No. 61.**Writ of Injunction.**

The United States of America,

— District of —, ss.

The President of the United States of America to C. D.,
Greeting :

Whereas, A. B., citizen of the state of —, has filed on the chancery side of the circuit court of the United States for the — district of —, a bill against C. D., and has obtained an allowance for an injunction, as prayed for in said bill. Now, therefore, we having regard to the matters in said bill contained, do hereby command and strictly enjoin you, the said C. D., [*set forth from doing what he is restrained, also the names of all persons so restrained,*] which commands and injunctions you are respectively required to

observe and obey, until our said circuit court shall make further order in the premises.

Hereof fail not, under penalty of the law thence ensuing.

[*Add teste. See No. 31.*]

No. 62.

Writ of Injunction in Patent Cases.

For form of Writ of Injunction in Patent Cases see under title "Patents."

No. 63.

Injunction Bond,

The United States of America,

— District of —, ss.

Know all men by these presents, that C. D., E. F., and G. H. are held and firmly bound unto A. B. in the sum of — dollars, to the payment of which they bind themselves, each for himself and his heirs, executors and administrators firmly by these presents.

Sealed with their seals and dated this — day of —, 1894.

The condition of the above obligation is such, that whereas, A. B., citizen of the state of —, having filed on the chancery side of the circuit court of the United States for the — district of — a bill against the said C. D., and having obtained an allowance of an injunction, as prayed for in said bill, from said court. Now, if the said C. D. shall abide the decision of said court, and pay all moneys and costs which shall be adjudged against him in case the said injunction shall be dissolved, then these presents shall be void; otherwise to remain in full force.

C. D. [*Seal.*]

E. F. [*Seal.*]

G. H. [*Seal.*]

[*Add acknowledgment and justification of sureties. See No. 36.*]

No. 64.**Injunction Bond in Patent Cases.**

For form of Bond see under title "Patents."

No. 65.**Writ of Certiorari.**

For form of Writ of Certiorari see under the titles "Removal of Causes" and "Appellate Proceedings."

No. 66.**Writ of Ne Exeat Republica (1).**

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal of the — District of —, Greeting:

Whereas, it is represented to us in our circuit court of the United States for the — district of — in equity, on the part of A. B., plaintiff, against C. D., defendant (among other things), that he, the said defendant, is greatly indebted to the said plaintiff, and designs quickly to go into parts without the United States (as by oath made on that behalf appears), which tends to the great prejudice and damage of the said plaintiff.

Therefore, in order to prevent this injustice, we do hereby command you that you do, without delay, cause the said C. D. personally to appear before you, and give sufficient bail or security in the sum of — dollars that the said C. D. will not go or attempt to go into parts without the United States without leave of our said court; and in case the said C. D. shall refuse to give such bail or security then you are

to commit the said C. D. to our next prison, there to be kept in safe custody until he shall do it of his own accord; and when you shall have taken such security you are forthwith to make and return a certificate thereof to us in our said circuit court of the United States for the —— district of —— distinctly and plainly under your hand, together with this writ.

[*Add teste, as in No. 31.*]

(1) See Foster's Fed. Prac., pp. 323, 455 *et seq.*; Desty's Fed. Proc., Sec. 237; R. S., Sec. 717. See also Beach's Modern Eq. Prac., chapter on *ne exeat*.

IN EQUITY.

FORMAL PARTS OF A BILL.

No. 67.

Caption and Address.

The District [*or*, Circuit] Court of the United States,
in and for the — District of —.

A. B., Plaintiff (1), }
 vs. } In Equity. No. —.

C. D., Defendant. }

To the Honorable, the Judges of the District [*or*, Circuit]
Court of the United States, in and for the District of —.

(1) It is the practice with many pleaders to preserve the name "complainant" in suits of equity, but the United States Supreme Court in promulgating the Rules in Equity use "plaintiff," with very few exceptions, to designate the party bringing a bill in equity.

No. 68.

Commencement or Introduction (1).

A. B., of —, and a citizen of the state of —, brings this, his bill, against C. D., of —, a citizen of the state of —, and inhabitant of the — district of —.

And thereupon your orator complains and says:

(1) This form is suggested by the United States Supreme Court. See 20th Rule in Equity; Desty's Fed. Proc., p. 1146; Foster's Fed. Prac., Sec. 66; Beach's Modern Equity Prac., Sec. 88.

No. 69.**Commencement or Introduction by other than an Individual (1).**

Nos. 3, 4, and 5, in connection with No. 68, will form sufficient guide for the introduction by a corporation, co-partnership, or an alien.

(1) See notes to No. 68.

No. 70.**The Stating Part (1).**

[*After setting out the facts, showing plaintiff's equity.*] And your orator [*or, the plaintiff*] hoped that the said C. D., the defendant, would have complied with the reasonable requests of your orator [*or, the plaintiff*], as in justice and equity he ought to have done.

(1) See Beach's Modern Eq. Prac., Sec. 89; Story's Eq. (10th ed.), Secs. 27 and 28.

No. 71.**The Confederating Part (1).**

But now so it is, may it please your honor, that the said C. D., combining and confederating with divers persons [*or if there are several defendants, combining and confederating together and with divers persons*], at present unknown to your orator [*or, the plaintiff*], whose names, when discovered, your orator [*or, the plaintiff*] prays he may be at liberty to insert herein with apt words to charge them as parties defendant hereto, and contriving how to wrong and injure your orator [*or, the plaintiff*] in the premises, he, the said R. H., absolutely refuses to comply with such requests, and he at times pretends that, etc.

or,

But now so it is, may it please your honor, that the said R.

H., L. M., and N. M., in concert with each other, allege that, etc., [*or*, colluding and confederating with each other, refuse to comply with such requests, and pretend that, etc.].

(1) See Foster's Fed. Prac., Sec. 79; Beach's Modern Eq. Prac., Sec. 87; Story's Eq., Sec. 29. The confederating part may be omitted, 21st Rule in Eq.

No. 72.

The Charging Part (1).

That the said defendant sometimes alleges and pretends [*insert the supposed contention of defendant*], and at other times he alleges and pretends, etc., whereas, your orator [*or*, the plaintiff] charges the contrary to be the truth, and that, etc., [*stating the special matter with which plaintiff meets defendant's supposed case*].

(1) Every bill must contain sufficient matter in itself to maintain the case of the plaintiff (*Harrison vs. Nixon*, 9 Peters, 483); but it need not allege or specially describe all the evidence which is to be put into the case, provided it contains allegations broad enough to cover the evidence relied on. *Nesmith vs. Calvert*, 1 Wood. & M., 34. While the bill may be framed with a double aspect, so that if the court decide against the plaintiff upon one view of his case it may afford him relief in another (*Hobson vs. McArthur*, 16 Peters, 182), yet the alternative case must be the foundation for the same relief. *Shields vs. Barrow*, 17 How. 130. Two inconsistent causes for equitable relief can not be joined in the same bill. *Wilkinson vs. Dobbie*, 12 Blatchf., 289.

The 21st Rule in Equity authorizes the optional omission of the matters of excuse and pretenses set up by defendant.

See cases cited under 21st Rule in Equity in Desty's Fed. Proc., p. 1147.

See also Foster's Fed. Prac. Sec. 80.

No. 73.

The Jurisdiction Clause (1).

All which actings, doings, and pretenses of the said defendant [*or*, defendants] are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppres-

sion of your orator [*or*, the plaintiff] in the premises. In consideration whereof, and forasmuch as your orator [*or*, the plaintiff] is remediless in the premises, at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable. To the end, therefore, etc.

(1) This clause may be omitted. See 21st Rule in Equity. But where the jurisdiction depends on citizenship of the parties in different states, this must appear somewhere in the bill, or the omission will be fatal at any stage of the cause, unless cured by amendment. *Wood vs. Mann*, 1 Sumn. 578. See also Act of March 3, 1887; 25 St. at L., p. 433. Jurisdictional facts stated in the bill will be deemed to be true in a suit on a decree when collaterally attacked. *Harrison vs. Harrison*, 56 Am. Dec. 227.

See Beach's Modern Eq. Prac., Sec. 87; Story's Eq. (10th ed.), Sec. 34; Foster's Fed. Prac., Sec. 81.

No. 74.

The Interrogating Part (1).

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether, etc.
2. Whether, etc.

(1) See 43d Rule in Equity; Beach's Modern Eq. Prac., Sec. 90; Story's Eq. (10th ed.), Secs. 35, note 2, 36, 37, and 38; Foster's Fed. Prac., Sec. 82; *Langdon vs. Goddard*, 3 Story, 13.

No. 75.

The Prayer for Relief (1).

And that an account may be taken by and under the direction and decree of this honorable court, etc., etc. And that the defendant may be decreed to pay unto your orator [*or*, the plaintiff], etc., etc. And that your orator [*or*, the plaintiff] may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to your honor shall seem meet.

(1) See Beach's Eq. Prac., Secs. 91 and 92, and cases cited; Foster's Fed. Prac., Sec. 83.

The 21st Rule in Equity provides that, "The prayer of the bill shall ask the special relief to which the plaintiff supposes himself entitled, and also shall contain a prayer for general relief, and, if an injunction, or a writ of *ne exeat regno*, or any other special order pending the suit, is required, it shall also be specially asked for."

A prayer for general relief is a prayer for any relief the court can give, except by injunction, upon the facts averred in the bill. Chicago, St. Louis, etc., R. R. Co. *vs.* McComb, 2 Fed. Rep. 18.

Under the prayer for general relief, other relief may be granted than that which is particularly prayed for; but such relief must be agreeable to the case made by the bill. English *vs.* Foxall, 2 Peters, 595; Boone *vs.* Chiles, 10 Peters, 177; Hobson *vs.* McArthur, 16 Peters, 182. Thus, although the complainant in a bill for the specific execution of a contract may not have specifically claimed in his bill a decree for rents and profits while in the possession of the defendant, he may claim it in the appellate court, under the prayer for general relief. Watts *vs.* Waddle, 6 Peters, 389. But where a bill charges actual and intentional fraud, and prays for relief on that ground, the complainant can not, under the prayer for general relief, rely on circumstances which might amount to a case for relief, under a distinct head of equity, although those circumstances substantially appear in the bill, but are charged in aid of the charge of actual fraud. Eyre *vs.* Potter, 15 How., 42.

The general prayer for relief and sufficient facts alleged therefor saves a bill from demurrer, though the special relief prayed for be inappropriate. Patrick *vs.* Isenhardt, 20 Fed. Rep., 339.

Where a specific relief is asked for, even though there be a prayer for general relief, the circuit court can not grant a relief which is inconsistent with, or entirely different from, that which is prayed for. Wilson *vs.* Graham, 4 Wash., 53.

No. 76.**A More Extended Form (1).**

[*Prayer for answer—oath waived—injunction against proceeding at law—declaration of trust—conveyance.*] “To the end, therefore, that the plaintiffs may have that relief which they can only obtain in a court of equity, and that the said defendants may answer the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by the plaintiffs, and that the said defendants, who are plaintiffs as aforesaid in the said action at law, may be perpetually enjoined from further prosecuting the same, and that it may be declared that the said lands are charged with a trust in favor of, and ought to be held for, the use and benefit of, etc., and that the said defendants, or so many and such of them as shall appear to have the legal title to said lands, may be decreed to convey such legal title, free of all encumbrances done or suffered by them, or any or either of them unto the plaintiffs, in their said capacity, to hold to them and their, etc., upon the trusts aforesaid, and for such further or other relief as the nature of this case may require, and to your honors shall seem meet.”

(1) *Earl vs. Wood*, 8 Cush., 430.

No. 77.**Another Form of Prayer for Injunction.**

Wherefore your orator prays the court to now grant him a writ of injunction, restraining and enjoining the said defendants [*insert the special matters sought to be enjoined*], until the further order and decree of this court in the premises.

No. 78.**Prayer for the Production of Deeds, Papers, etc. (1).**

And that the said defendants may set forth a list, or schedule, and description of every deed, book, account, letter, paper or writing relating to the matters aforesaid, or either

of them ; or wherein or whereupon there is any note, memorandum, or writing relating in any manner thereto, which now are, or ever were, in their or either, and which, of their possession or power, and may deposit the same in the office of the clerk [*or, in the hands of one of the masters*] of this honorable court, for the usual purposes ; and otherwise that the said defendants may account for such as are not in their possession or power.

(1) Dan. Ch. Pr., p. 1888.

No. 79.

Prayer for Subpœna.

May it please your honors to grant unto the plaintiff a writ of subpœna, to be directed to the said C. D. (1), etc., thereby commanding them, and each of them, at a certain time, and under a certain penalty therein to be limited, personally to appear before this honorable court [*or, your honors in this honorable court*], and then and there full, true, direct, and perfect answer make to all and singular the premises, *and further to stand to, perform and abide such further order, direction and decree therein as to this honorable court* [*or, to your honors*] *shall seem meet* [*or, as shall seem agreeable to equity and good conscience*] (2).

(1) The prayer for *subpœna* must contain the names of all the defendants. See 23d Rule in Equity ; Beach's Modern Eq. Prac., Sec. 94, and notes ; Foster's Fed. Prac., Sec. 85, and cases cited.

(2) The words in italics must be omitted in bills merely for *discovery, or, to perpetuate the testimony of witnesses*. Story Eq. Pl., Sec. 44, note ; Barton's Suit in Eq. 43, note 1 ; Equity Drafts, 6.

No. 80.

Another Form of Prayer for Subpœna.

To the end that your orator may obtain the relief to which he is justly entitled in the premises, he now prays the court to grant him due process by subpœna directed to the said

C. D. and E. F., defendants hereinbefore named, requiring and commanding each of them to appear herein and answer under oath [*or*, but not under oath, the same being expressly waived] the several allegations in this your orator's bill contained.

No. 81.

Prayer for Process Where the Government is a Defendant.

And may it please your honors that the district attorney of the United States for the district of —, on being attended with a copy of this bill, may appear and put in his answer thereto, and may stand to and abide such order, direction, and decree in the premises as to your honors shall seem meet, and your orator shall ever pray, etc.

No. 82.

Form of Prayer for Writ of Ne Exeat (1).

Wherefore your orator prays the court to grant him a writ of *ne exeat republica*, restraining and forbidding the said C. D., defendant hereinbefore named, from departing beyond the limits of the United States without leave of this court first had.

(1) See R. S., Sec. 717; Desty's Fed. Proc., Sec. 237, and cases there cited; Foster's Fed. Prac., Sec. 83. See also note to No. 75.

No. 83.

Prayer for Writ of Certiorari.

May it please your honors, therefore, to grant unto your orator a writ of *certiorari*, to be directed to the justices of the said — court of —, thereby commanding them upon the receipt of the said writ to certify and remove the said

bill and all proceedings thereon into this honorable court; and to stand to and abide such order and direction as to your honors shall seem meet, and the circumstances of the case require, and your orator shall ever pray, etc.

No. 84.

Signature of Bills.

All bills must be signed by counsel. See 24th Rule in Equity; Beach's Modern Eq. Prac., Sec. 84, and cases cited; Foster's Fed. Prac., Sec. 86, and cases cited. Signature on the back of the bill has been held sufficient. *Dwight vs. Humphreys*, 3 McLean, 104.

No. 85.

Verification (1).

The United States of America,

— District of —, ss.

On this — day of —, 1894, before me personally appeared A. B., the above named plaintiff, who made solemn oath that he had read the foregoing bill of complaint, [*or, answer, as may be*] subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

[*Seal.*]

J. N.,
[*Official title.*]

(1) See Beach's Modern Equity Prac., Sec. 85; Foster's Fed. Prac., Sec. 87. Affidavit when a stockholder brings a bill against the corporation, see 94th Rule in Equity.

BILLS IN SPECIAL CASES.

No. 86.**Creditor's Bill (1) by Simple Contract Creditors Against Executors of Deceased Debtor, for Payment of His Debts.**

[Caption, address, and introduction.]

Your orator and F. H., creditors by simple contract of J. F., late of, etc., deceased, on behalf of themselves and all others, the creditors of the said J. F., who shall come in and seek relief by and contribute to the expense of this suit, that the said J. F., at the time of his death, was justly and truly indebted to your orator, A. B., in the sum of — dollars (2) and upwards, for goods sold and delivered, and moneys paid, laid out, and expended to and for his use, and that the said J. F. was also justly and truly indebted to your orator, F. H., in the sum of — dollars (2) and upwards, for, etc.

And your orators further show unto your honors that the said J. F., in his lifetime, and at the time of his death, was possessed of, or well entitled unto, a considerable personal estate, and being so possessed, departed this life on or about —, having first duly made his last will, bearing date, etc., and thereby appointed C. D. and E. F., the defendants herein, the executors thereof, as in and by the said will, or the probate thereof, to which your orators crave leave to refer when produced to this honorable court, will appear.

And your orators further show unto your honors that the said C. D. and E. F. duly proved the said will in the proper court, and undertook the executorship thereof, and possessed themselves of the personal estate and effects of the said testator to a very considerable amount, and more than sufficient to satisfy his just debts and funeral expenses.

And your orators further show unto your honors that the said C. D. and E. F., having possessed themselves of the said testator's personal estate and effects as aforesaid, your orators have made and caused to be made several applications to them, the said C. D. and E. F., and requested them to pay and satisfy unto your orators their respective demands, with which just and reasonable requests your orators well hoped that the said C. D. and E. F. would have complied, as in justice and equity they ought to have done. But now so it is, etc. And the said defendants pretend that the said testator's personal estate was small and inconsiderable, and has already been exhausted in the payment of his funeral expenses and just debts. Whereas your orators charge that the said testator's personal estate and effects were more than sufficient to discharge all his just debts and funeral expenses, and so it would appear if the said defendants would set forth a full, true, and particular account of all and every the personal estate and effects of the said testator come to their, or either of their, hands or use, and also a full, true, and particular account of the manner in which they have disposed of or applied the same, but which they refuse to do. All which actings, etc. [*See Nos. 71 to 74, interrogating to the stating and charging parts.*] And that an account may be taken of the moneys due to your orators in respect of their said several demands, and of others the debts owing by the said J. F. at the time of his death; and that if the said defendants shall not admit assets of the said testator, then that an account may also be taken of the personal estate and effects of the said testator possessed or received by, or by the order or for the use of the said defendants, or either of them, and that such personal estate may be applied in a due course of administration. And that your orators and the said other unsatisfied creditors by simple contract of the said testator may have such further or other relief in the premises as to your honors shall seem meet, and the circumstances of the case may require. May it please, etc.

[*Pray subpoena against C. D. and E. F.*]

[*Verification as in No. 85.*]

(1) The origin of the jurisdiction in case of creditors' bills was in the narrowness of common-law remedies by writs of execution, which were confined to those estates and interests recognized by the law, and did not extend to those which were equitable in their nature; but statutes both in England and in many of the states have greatly extended the scope of writs of execution so as to afford an adequate remedy in cases where formerly the party was compelled to resort to a creditor's bill. Where the remedy still exists, a judgment must first be obtained, and certain steps taken towards enforcing it before a bill can be filed. See Pom. Eq. Jur., Sec. 1415. See also *Johnson vs. Waters*, 111 U. S., 640, and *Ager vs. Murray*, 105 U. S., 126.

(2) Must exceed \$2000 in the aggregate, exclusive of interest, to give circuit court jurisdiction. See Act of March 3, 1887, as amended 1888, 25 St. at L. 433; Desty's Fed. Proc., Sec. 84; Foster's Fed. Prac., Sec. 15.

No. 87.

Creditors' Bill Against a Corporation and its Stockholders to Enforce Statutory Liability (1).

[*Caption, address, and introduction.*]

And the plaintiffs show that the capital stock of said corporation was fixed and limited by said corporation at seven hundred and fifty thousand dollars; and that on the — of —, in the year—, and before the whole amount of the capital stock fixed and limited by said corporation had been fully paid in, and before any certificate thereof had been made and recorded as prescribed by law, the said The C. D. Co., by G. McK., its treasurer, duly authorized thereto, made and delivered to the plaintiffs three several promissory notes in writing, dated the said — day of —, one for the sum of fifty thousand dollars, the other two for fifteen thousand dollars each, and thereby, for value received, promised the plaintiffs to pay to them or their order the amount of said notes, to wit, eighty thousand dollars, on the — day of —, in the year —, with interest from the — day of —, of the year —, copies of which notes, with the indorsements thereon, are set out in the copy of judgment hereto annexed.

And the plaintiffs further show that at the time the said The C. D. Co. made and delivered said notes to the plaintiffs, and from the time of its incorporation and organization until the — day of —, in the year —, the said The C. D. Co. had not given notice annually, as required by the laws of the said state of —, in some newspaper printed in the county where the works of said corporation were established, to wit, the county of E., or in any newspaper printed in any other county, of the amount of all assessments voted by the corporation, and actually paid in; nor had it given notice in any newspaper of the amount of all existing debts due from said corporation.

And the plaintiffs further show that from the time of the incorporation and organization of the said The C. D. Co. to the time said corporation made and delivered said notes to the plaintiffs, and for a long time thereafter, the capital stock, fixed and limited by said corporation as aforesaid, had not been fully paid in; nor has there, from the time of its organization to the present time, been any certificate of the payment of said capital stock made and recorded by said corporation as by law provided.

And the plaintiffs further show that on, to wit, the — day of —, in the year —, they commenced a suit against the said The C. D. Co. upon the aforesaid notes, returnable to the — court, then next to be holden at N., within and for the said county of E., on the first Monday of —, in the year —, and duly entered said suit in said court, and there prosecuted the same to judgment. And at said term of the said court, on, to wit, the — day of —, in the year —, by consideration of the justice of said — court, judgment was rendered in said suit against said The C. D. Co. in favor of the plaintiffs for the sum of \$—, debt, and \$—, costs of suit, and execution was thereupon issued by said — court, on, to wit, the — day of said —, against said The C. D. Co. in favor of the plaintiffs for the said sum of \$—, debt, and \$—, costs of suit; copies of which judg-

ment, execution, and officer's return upon said execution are hereto annexed.

And the plaintiffs further show that on, to wit, the said — day of —, the day of issuing said execution, they placed for collection said execution in the hands of one A. F., a deputy sheriff, qualified to collect, serve, and return said execution. And the said deputy sheriff, on, to wit, the — day of —, made demand upon the said The C. D. Co. for the payment of the amount due to the plaintiffs; and for which judgment and execution had been rendered and issued in said suit as aforesaid.

And the plaintiffs show that the said The C. D. Co. did neglect, for the space of thirty days after said demand by said deputy sheriff, holding said execution, to exhibit to said deputy sheriff real or personal estate belonging to said corporation, subject to be taken on execution, sufficient to satisfy said execution, or any part thereof. And the said corporation has never exhibited to said deputy sheriff any estate, real or personal, from which he might satisfy said execution in whole or in part; and the said corporation has ever since neglected and refused to pay the same, or any part thereof; and the said deputy sheriff duly returned said execution into the clerk's office of said — court, at S., in said county of E., in no part satisfied; and there is now due to the plaintiffs upon said judgment, rendered upon said notes, the said sum of \$——, debt, and \$——, costs of suit, making in all \$——, with interest from the said — day of —, the day of the date of said judgment.

And the plaintiffs further show that at the time when said judgment debt was contracted, on, to wit, the — day of —, in the year —, the day of the date of said notes, and during the time from and after the said — day of —, and before the capital stock of said corporation, fixed and limited as aforesaid, was fully paid in, and before any certificate that said capital stock had been paid in was made and recorded, as by law required, and from and after the said — day of

—, and before any notice of the assessments voted by said corporation and actually paid in had been given, in any newspaper printed in said county of E., or printed in any other county; and from and after said — day of —, and before any notice of the amount of all existing debts due from said corporation had been given in any such newspaper as by law required, and at the time when your orators commenced their suit aforesaid against the said The C. D. Co., and in which judgment aforesaid was rendered, the following named persons became, and were, stockholders in the said The C. D. Co., each holding stock therein of the amount and number of shares set against their respective names:

T. A., of L., county of M., holder of — shares, par value
\$—

E. B., of B., county of S., holder of — shares, par value
\$—

Etc., etc.

Wherefore the plaintiffs, in behalf of themselves and the aforesaid other creditors of the said The C. D. Co., bring the foregoing bill against said The C. D. Co., and the aforesaid stockholders therein, and pray that the aforesaid stockholders may be ordered and decreed to pay to the plaintiffs the amount due them as aforesaid, as fixed and determined by the judgment aforesaid, with interest from the date of said judgment, and to pay such other creditors of the said corporation as may become parties to this bill such sums as may be found due to such creditors; and that the amount of the debt due as aforesaid to the plaintiffs from said The C. D. Co., and such as may be found due to such other creditors as may become parties hereto, may be assessed upon said stockholders as law and equity may require.

And that the plaintiffs may have such orders, decrees, and process as may be necessary to enforce the payment of such sums as may be assessed upon said stockholders, and may have such further and other relief in the premises as the nature and circumstances of the case require, and as shall seem meet unto this honorable court.

May it please your honors to grant unto the plaintiffs a writ of subpœna, to be directed to the said The C. D. Co., and the said stockholders in this bill named, thereby commanding them to a certain day, and under certain penalties therein expressed, personally to appear before this honorable court, and then and there full, true, direct, and perfect answers make to all and singular the premises; and further, to stand to, perform, and abide such further orders, directions, and decrees therein as to this honorable court shall seem meet.

X. & X., Solicitors and of Counsel.

A. B.

C. B.

[*Verification. See No. 85.*]

(1) Essex Company *vs.* Lawrence Machine Shop, 10 Allen, 352.

No. 88.

For a Dissolution of a Partnership.

[*Caption, address, and introduction.*]

That in or about the month of —, your orator entered into an agreement with C. D., of, etc., and E. F., of, etc., the defendants hereinafter named, to form a partnership with them, in the business of auctioneers, which agreement was reduced to writing, and signed by your orator and the said defendants, and was in the words and figures, or to the purport and effect, following, that is to say: [*Stating the same*], as in and by the said agreement, reference being thereunto had, will appear.

And your orator further shows that the said copartnership business was entered upon and has ever since continued to be carried on by your orator and the said defendants, in pursuance of and under the aforesaid agreement, no articles or other instrument having ever been prepared and executed between them.

And your orator further shows unto your honors, that having much reason to be dissatisfied with the conduct of

the said C. D., and being desirous therefore to dissolve the said partnership, your orator, on or about —, caused a notice in writing, signed by your orator, to be delivered to the said C. D. and E. F., in the words and figures of the purport and effect following, that is to say: "In conformity," etc., etc.; as in and by such written notice now in the custody or power of the said defendants, or one of them, when produced, will appear.

And your orator further shows that the said C. D. has, from time to time since the commencement of the said partnership, applied to his own use, from the receipts and profits of the said business, very large sums of money, greatly exceeding the proportion thereof to which he was entitled, and in order to conceal the same the said C. D., who has always had the management of the said copartnership books, has never once balanced the said books.

And your orator further shows that having, in the beginning of the year —, discovered that the said C. D. was greatly indebted to the said copartnership, by reason of his application of the partnership moneys to his own use, your orator, in order to form some check upon the conduct of the said C. D., requested that he would pay all copartnership moneys which he received into their bankers, and would draw for such sums as he had occasion for, but the said C. D. has wholly disregarded such request, and has continued to apply the partnership moneys received by him to his own use, without paying the same into the bankers, and has also taken to his own use moneys received by the clerks, and has by such means greatly increased his debt to the partnership, without affording to your orator and the said E. F. any adequate means of ascertaining the true state of his accounts.

And your orator further shows that he has, by himself and his agents, from time to time applied to the said C. D., and has requested him to come to a full and fair account in respect of the said copartnership transactions, with which just and reasonable requests your orator well hoped that the

said defendant would have complied, as in justice and equity he ought to have done. But now so it is, etc. [*see No. 70*], the said defendant C. D. absolutely refuses so to do, and he at times pretends that he has not received and applied to his own use more than his due proportion of the partnership profits. Whereas your orator charges the contrary thereof to be the truth, and so it would appear if the said defendant would set forth a full and true account of all and every his receipts and payments, in respect of the said partnership transactions, and of the gains and profits which have been made in each year since the commencement of the said partnership.

And your orator charges that the said C. D. has in fact received the sum of — (1) dollars, and upwards, beyond his due proportion of the partnership profits, and that he is nevertheless proceeding to collect in the partnership debts and moneys, whereby the balance due from him will be increased, to the great loss and injury of your orator and the said E. F. And your orator charges that the said C. D. ought therefore to be restrained by the order and injunction of this honorable court from collecting and receiving any of the said partnership debts and moneys. And your orator charges that the said E. F. refuses to join your orator in this suit. All which actings, etc. [*See No. 73.*]

And that the said defendants may answer the premises; and that the said copartnership may be declared void, and that an account may be taken of all and every the said copartnership dealings and transactions from the time of the commencement thereof; and also an account of the moneys received and paid by your orator and the said defendants respectively in regard thereto. And that the said defendants may be decreed to pay to your orator what, if anything, shall, upon the taking of the said accounts, appear to be due to him, your orator being ready and willing, and hereby offering, to pay to the said defendants, or either of them, what, if anything, shall, upon the taking of the said accounts, appear

to be due to them, or either of them, from your orator. And that in the meantime the said defendant C. D. may be restrained by the order and injunction of this honorable court from collecting or receiving the partnership debts or other moneys. [*And for further relief.*] May it please, etc.

[*Pray subpoena against E. F., and subpoena and injunction against C. D.*]

(1) See No. 86, note 2.

No. 89.

For an Account of Partnership Dealings after a Dissolution, and for a Receiver (1).

[*Caption, address, and introduction.*]

That on or about —, your orator A. B. and C. D., of, etc., the defendant hereinafter named, entered into copartnership together as attorneys and solicitors, your orator engaging to bring into the business the sum of — dollars, and being to receive one third part or share of the profits; and the said C. D. engaging to bring into the business the sum of — dollars, and being to receive two third parts or shares of the said profits.

And your orator further shows unto your honors that your orator accordingly brought into the business the said sum of — dollars, and that the said copartnership was carried on and continued until the — day of —, when the same was dissolved by mutual consent, and the usual advertisement of such dissolution was inserted in the —, a paper published at —, once a week for the period of — weeks.

And your orator further shows that the said copartnership business was carried on in an office building known as No. —, — street, which building, at the time of the dissolution of the said copartnership, was held by the said defendant and your orator under an agreement for a lease for — years from —, and it was verbally agreed between the said defendant and your orator that the said defendant should take to himself the benefit of the said agreement, accounting to

your orator for his proportion of the value thereof, and in pursuance of such agreement the said defendant has ever since continued, and now is in possession of the said house or building.

And your orator further shows unto your honors that no settlement of the said copartnership accounts has ever been made between your orator and the said defendant, and that since the said dissolution your orator has repeatedly applied to the said defendant to come to a final settlement with respect thereto. And your orator well hoped that the said defendant would have complied with such, your orator's reasonable requests, as in justice and equity he ought to have done. But now so it is, etc. [*see No. 71*], the said defendant absolutely refuses so to do. And your orator charges that the said defendant has possessed himself of the said copartnership books, and has refused to permit your orator to inspect the same, and has also refused to render to your orator any account of the copartnership moneys received by him. And your orator charges that he has, since the said dissolution, paid the sum of — dollars in respect of the copartnership debts.

And your orator further charges that upon a true and just settlement of said accounts it would appear that a considerable balance is due from the said defendant to your orator in respect of their said copartnership dealings, which said sum or balance is at least the sum of — dollars; but nevertheless the said defendant is proceeding to collect in the said copartnership debts, and to apply the same to his own use, which the said defendant is enabled to do by means of his possession of the books of account as aforesaid. And your orator charges that the said defendant ought to be restrained by the injunction of this honorable court from collecting in the said debts, and that some proper person ought to be appointed by this honorable court for that purpose. All which actings, etc. [*See No. 73*].

And that an account may be taken of all and every the said

late copartnership dealings and transactions until the time of the expiration thereof, and that the said C. D. may be directed to pay to your orator what, if anything, shall upon such account appear to be due from him, your orator being ready and willing, and hereby offering, to pay to the said C. D. what, if anything, shall appear to be due to him from the said joint concern. And that some proper person may be appointed to receive and collect all moneys which may be coming to the credit of the said late copartnership. And that the said C. D. may in the meantime be restrained by the order and injunction of this honorable court from collecting or receiving any of the debts due and owing thereto. [*And for further relief.*] May it please, etc.

(1) Equity has practically exclusive jurisdiction in proceedings for an account and settlement of partnership affairs, including suits for an account and settlement between the partners themselves, suits for a settlement of firm affairs between the survivors and the personal representatives of a deceased partner, and suits to settle the affairs of an insolvent firm, and to adjust the demands of a firm's creditors, and the creditors of the individual partner. The equitable jurisdiction over partnerships is a necessary outgrowth of the jurisdiction over accounting, and the remedies of dissolution, injunction, and receivership are incidents necessary to a final and complete relief. Pom. Eq. Jur., Sec. 1421. Equity has jurisdiction of matters of account where the parties stand in a fiduciary relation to each other, and the account is so complicated that it can not be conveniently taken in a court of law. *Pacific R. R. of Mo. vs. Atlantic & Pacific R. R. Co.*, 20 Fed. Rep., 277. Thus complicated accounts preliminary to a distribution of assets or division of profits are of equity cognizance. *John Crossley Sons vs. New Orleans*, 20 Fed. Rep., 352. The circuit courts have jurisdiction where the amount in controversy exceeds \$2,000 exclusive of costs, and the parties are citizens of different states. See Act of March 3, 1887, 25 Stat. at L., 433; *Desty's Fed. Prac.*, Sec. 84.

No. 90.

Foreclosure of Mortgage (1).

[*Caption and introduction.*]

That heretofore, to wit, on the — day of —, in the year —, the said C. D., defendant, being indebted unto your

orator in the sum of — (2), current money, and intending to secure the payment thereof unto your orator, did, by his deed of that date, convey unto your orator and his heirs certain real estate lying in said county, and particularly described in said deed, to which said deed there is a condition annexed that it be void on payment by said — to your orator of the aforesaid sum of money, with interest thereon from —, on or before the — day of —, in the year —, as by a copy of said deed filed herewith as a part of this bill will more fully appear.

And your orator charges that no part of the aforesaid sum of money, or the interest accruing thereon, has been paid but the same is still owing to him, although the time limited for the payment thereof by the condition aforesaid has passed, and payment thereof has been duly demanded of the said — (3).

To the end, therefore, that the said — may answer the several matters and things hereinbefore stated, as fully and particularly as if they were herein again repeated, and he was thereunto specially interrogated (4); and that the premises aforesaid, or so much thereof as may be necessary, may be sold for payment of your orator's claim, with interest as aforesaid; and that your orator may have such further or other relief as his case may require.

May it please your honor to grant unto your orator the writ of *subpœna* against the said C. D., of —, commanding him to appear in this court at some certain day to be therein named, and to answer the premises, and abide by and perform such decree as may be passed therein.

R. X.,

Solicitor for Plaintiff.

And your orator admits that the interest, which accrued due prior to and on the —, has been paid to him by the said —; and he also admits the receipt of the further sum of —, which was paid to him on the — for further interest, and in part of the principal debt secured by said mortgage. But he insists that the residue of said debt, with interest

accrued thereon since the last-mentioned day, is still due and owing to him.

[*Or as follows:*]

And your orator admits that sundry payments have been made to him by the said —, on account of said mortgage, as is more particularly admitted in the statement marked Exhibit B, and filed as part of this bill; but by said statement it appears, and so he insists, there is yet due to him on said mortgage a balance of —, besides interest thereon from the — day of —.

(1) Equity deals primarily and almost exclusively with the mortgagee. His interest in the mortgage is no longer an estate but a mere lien, an appendage of the debt personal assets, a thing in action signable with the debt but incapable of being separated from the debt and transferred by itself. He has no legal remedy on the mortgage, and can enforce the lien against the land only in equity, as this is the primary object of a foreclosure suit, which does not vest the title in the mortgagee, although it extinguishes that of the mortgagor by transferring it to the purchaser at the judicial sale. Pom. Eq. Jur., Sec. 1190. Milf. & Tyl. Pl. & Pr., p. 511.

(2) Must exceed \$2,000 to give circuit court jurisdiction. 25 Stat. at L., 433; Desty's Fed. Proc., Sec. 84.

(3) If payments have been made on account, they should be admitted in the bill, either specially or by referring to some statement or account accompanying the bill as in the following forms.

(4) A defendant is bound, upon a general interrogatory or prayer, to answer all the material averments in the bill fully and explicitly. In cases, therefore, where it is expected there will be no controversy about the facts, special interrogatories are not usually inserted. Where, however, the case involves many circumstances which rest in the knowledge of a suspected defendant, or where, from any cause, a full and minute discovery is desired from him, the interrogatories should be drawn as particular and searching as possible.

No. 91.

**To have Goods Redelivered, which have been Deposited
as a Security for Money Lent.**

[*Caption, address, and introduction.*]

That your orator, having occasion for a sum of money for the purpose of his business, made application to C. D., of, etc., the defendant herein, to lend him the same, and thereupon the said C. D., on or about —, advanced and lent to your orator the sum of — dollars (1), and in order to secure the repayment thereof with interest your orator deposited with the said defendant [*here insert a description of the goods*], which were of the value of — dollars, and upwards, and at the same time executed and delivered to the said defendant a bill of sale of the said goods so deposited with him; but it was not meant and intended thereby, either by your orator or the said defendant, that the said transaction should amount to an absolute sale of the said goods to the said defendant, but it was expressly agreed between your orator and the said defendant that your orator should, nevertheless, be at liberty to redeem the same.

And your orator further shows that being desirous to redeem the said goods, he has repeatedly applied to the said C. D., and has offered to repay him the said sum of — dollars, with lawful interest thereon, on having the said goods redelivered to him, with which just and reasonable requests your orator hoped that the said C. D. would have complied, as in justice and equity he ought to have done. But now so it is, etc. [*See No. 71.*] To the end, etc. [*See No. 74.*]

And that the defendant may answer the premises; and that an account may be taken of what is due to the said defendant for principal and interest in respect of the said loan of — dollars, and that upon payment thereof by your orator the said defendant may be decreed to deliver over to your orator the said goods so deposited with him as aforesaid. [*And for further relief.*] May it please, etc.

(1) See No. 90, note 2.

No. 92.

**To Redeem by Purchaser of an Equity of Redemption
From the Assignee in Insolvency of the Mortgagor.**

[*Caption, address, and introduction.*]

That one S. H., of N., in said county of W., and state of —, on or about the — day of —, was seized in fee. simple of, or otherwise well entitled to, certain real estate situated in said N., particularly described in certain deeds of conveyance of the same to said S. H.—one from J. F. and S. W., dated —, and one from J. E., dated —, recorded in the registry of deeds for the county of W., book 242, page 32; also a deed from J. E. to said S. H., dated —, recorded in said registry of deeds, book 248, page 457, copies of which deeds are hereunto annexed, and made a part of this bill, and marked —.

And your orator further shows that the said S. H., on or about said — day of —, made a conveyance of said premises, by way of mortgage, to one H. M., of B., in the county of S., and commonwealth of Massachusetts, to secure the repayment of a sum of money, with interest then due from the said S. H. to the said H. M.; and that subsequently, and on or about the — day of —, the said H. M. transferred and assigned all his interest in said mortgage deed, and in the premises therein described, and in the debt thereby secured, to the defendant. Copies of said mortgage deed, and of the assignment thereof, are hereunto annexed, marked —, and made a part of this bill.

And your orator further shows that after the making of the said transfer, and on the — day of —, the said defendant entered into the possession of the said mortgaged premises, or into the receipt of the rents and profits thereof, and has ever since continued in such possession and receipt.

And your orator further shows that since the said mortgaged premises have been in the possession of the defendant, the mills and principal buildings thereon have been destroyed

by fire, and that the same were insured by the said S. H., who occupied said premises under lease from said defendant for the benefit of said defendant, as further security for said mortgage debt, and that large sums have been paid to said defendant on said policies, and that they still hold other policies upon the machinery in said mills, which was also destroyed by fire, which policies have been assigned to said defendant as further security for, and in payment of, said mortgaged debt, and that the whole amount of said policies is sufficient to cancel the greater part, if not the whole, of the residue of said debt, which had not otherwise been paid by said S. H., and that if a just account were taken of such payments, and of the sums received, or to be received, on said policies, which are now due and payable, and of said rents and profits received by said defendant, the whole of said mortgage debt would be found to be justly paid and discharged.

And your orator further shows that on the — day of —, the equity of redemption which the said S. H. retained and owned in said property was transferred to one A. W. by assignments in the course of proceedings under the insolvent law of said commonwealth of Massachusetts, to which the said S. H. was a party, and that said A. W., as such assignee of said S. H., by his deed dated the — day of —, conveyed said equity of redemption to your orator, a copy of which deed is hereunto annexed, marked —.

And your orator charges that the matter in dispute herein exceeds the sum or value of two thousand dollars exclusive of interest and costs (1).

And your orator further shows that being the owner of said right of redemption in said property, he has applied to said defendant and requested him to come to an account for the rents and profits of the said premises so received by him, and of the moneys received by him from said S. H., for the interest and principal of said debt, and from the said policies of insurance, and to deliver up the possession of

said mortgaged premises to him, upon being paid what, if anything, should be found to be justly due to him upon said account, which your orator is, and has been, ready and willing to pay, and is ready to bring the same into court, if anything shall be found to be justly due to said defendant upon the proper taking of said account. And your orator well hoped that the said defendant would have complied with such requests, as in justice and equity he ought to have done; but the said defendant, acting in concert with divers persons unknown to your orator, refused to comply therewith, and insists upon holding possession of said estate, and foreclosing your orator's right of redemption therein, and retaining said policies and the amounts received thereon, and said rents and profits, without accounting for the same.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and the said defendant may answer the premises, and that an account may be taken of what, if anything, is due to the said defendant for principal and interest on the said mortgage, and that an account may be taken of the rents and profits of the said mortgaged premises, which have been possessed or received by the said defendant, or by any other person or persons, by his order or for his use, or which, without their willful default or neglect, might have been received; and also of all the sums that may have been paid by said S. H. or others towards the principal and interest of said mortgage debt; and also of the policies of insurance and other securities which the said defendant has received, and of the sums which he has or might have realized therefrom, on account of the principal and interest of said debt, and of the value of such policies and other securities now in his hands on account of said debt, which he has not sold or turned into money; and that the said defendant be ordered to apply the same to the payment of said debt; and that if it shall appear that said rents and profits and the payments and the proceeds of said policies and other securities have

been and are more than sufficient to pay the principal and interest of said mortgage debt, that the residue may be paid over to your orator ; and that your orator may be permitted to redeem the said premises, your orator being ready and willing, and hereby offering to pay what, if anything, shall appear to remain due, in respect to the principal and interest on the said mortgage ; and that the said defendant may be decreed to deliver up possession of the said mortgaged premises to your orator, or to such person as he shall direct, free from all encumbrances made by him, or any persons claiming under him, and may deliver to your orator all deeds and writings in his custody or power relating to the said mortgaged premises ; and that your orator may have such further and other relief in the premises as the nature of this case shall require, and to your honors shall seem meet.

May it please your honors to grant unto your orator the subpœna of the United States of America, to be directed to the said C. D., thereby commanding him, at a certain day, and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to, abide, and perform such order and decree thereon as to your honors shall seem meet. A. B.

X. & X., Solicitors.

[*Verification, as in No. 85.*]

(1) See Act of March 3, 1887, 25 Stat. at L., 433 ; Desty Fed. Proc., Sec. 84.

No. 93.

By Husband of Legatee against Executor (1).

[*Title, address, and introduction.*]

That W. S., late of, etc., duly made and published his last will and testament in writing, bearing date on or about —, and thereby, amongst other bequests, gave to his nephews and nieces, the children of his late sister, M. A., the sum of —

dollars each, to be paid to them as they should respectively attain the age of twenty-one years, and appointed C. D., of, etc., the defendant hereinafter named, the sole executor of his said will, as in and by the said will, or the probate thereof when produced will appear.

And your orator further shows unto your honors that the said C. D., soon after the death of the said testator, duly proved the said will in the proper court, and hath since possessed himself of the personal estate and effects of the said testator to an amount much more than sufficient for the payment of his just debts, funeral and testamentary expenses and legacies.

And your orator further shows that after the death of the said testator your orator intermarried with A. A., who was the niece of the said testator, and one of the children of the said M. A., in the said will named, and by virtue of such intermarriage your orator in right of his said wife became entitled to demand and receive the aforesaid bequest of — (2) dollars.

And your orator further shows that your orator's said wife lived to attain her age of twenty-one years, and that she hath lately departed this life, and that neither your orator nor his said wife received any part of the said legacy.

And your orator further shows that having obtained letters of administration upon the estate of his said wife, he has repeatedly applied to the said C. D. for the payment of the said legacy, and interest thereon from the time of his said late wife attaining her age of twenty-one years, and your orator hoped that such his reasonable requests would have been complied with, as in justice and equity they ought to have been. But now so it is, may it please your honors, that the said C. D., combining, etc. [*See No. 71.*] To the end, therefore, that, etc. [*See No. 74.*]

And that an account may be taken of what is due and owing to your orator for the principal and interest of the said legacy, and that the said defendant may be decreed to pay

the same to your orator. And if the said defendant shall not admit assets of the said testator sufficient to answer the same, then that an account may be taken of the estate and effects of the said testator which have been possessed or received by the said defendant or by any other person by his order or to his use, and that the same may be applied in a due course of administration. [*And for further relief.*] May it please your honors, etc.

[*Verification, as in No. 85.*]

(1) To recover a legacy at common law the assent of the executor was necessary; and the jurisdiction of equity over legacies, as well as over administrations, is based upon the trust relation existing between an executor or administrator and the creditors, legatees and distributees; upon the necessity of a discovery, an accounting or a distributing of assets in order to determine the rights of all interested parties; and the fact that the remedies given by all other courts are inadequate, incomplete and uncertain. Pom. Eq. Jur., Sec. 1127. In this country, probate courts have generally the power to decree the payment of legacies at the suit of the individual legatees, during the pendency of an administration; and in such proceedings they follow the settled doctrines of equity. Pom. Eq. Jur., Sec. 1129. For an extensive collation of the cases illustrating the jurisdiction of probate courts and courts of equity in the several states over the administration of estates, including suits for the payments of legacies, see Pom. Eq. Jur., Sec. 1154, note 2.

(2) See No. 90, note 2.

No. 94.

On Behalf of Infant Legatees (1).

[*Caption, address, and introduction.*]

The plaintiffs, infants under the age of twenty-one years, by J. E., of, etc., their next friend, that E. H., the elder, late of, etc., but now deceased, duly made and published his last will and testament in writing bearing date, etc., whereby he directed that W. T., of, etc., and E. B., of, etc., the defendants hereinafter named, and C. G., of, etc., who were the trustees and executors in his said will named, should,

out of the moneys which should come to their hands in manner therein mentioned, lay out and invest in or upon government or real securities at interest the sum of — dollars, upon trust, etc. [*The trustees were to pay the dividends to E. H., the testator's wife, during her life, or until her second marriage, and after her decease or second marriage, the whole of the dividends to be applied by the trustees for the maintenance and education of testator's grandchildren, the plaintiffs, to whom the principal was to be transferred, to the grandsons at twenty-one, and to the granddaughters at twenty-one or marriage*], as in and by, etc. And the plaintiffs further show that the said testator departed this life in or about the month of —, without having in any manner revoked or altered the said will, except by a codicil bearing date, etc., which did not relate to or affect the said trusts of the said sum of — dollars.

And the plaintiffs further show unto your honors that W. T., and E. B., and the said C. G. duly proved the said testator's will, and acted in the trusts thereof, and out of the moneys which came to their hands from the estate and effects of the said testator, in or about, etc., appropriated the sum of — pounds sterling, in satisfaction of the aforesaid legacy, in the purchase of the sum of — pounds sterling three per cent. consolidated bank annuities, and the said sum of stock is now standing in their names in the books of the governor and company of the Bank of England.

And the plaintiffs further show that the said C. G. has departed this life, and that the said E. H., on or about, etc., intermarried with and is now the wife of the said J. E., whereupon the interest of the said E. H. in the said sum of — pounds sterling three per cent. consolidated bank annuities wholly ceased.

And the plaintiffs further show that the said defendants paid to the said J. E. and E., his wife, the year's dividends which became due on the said sum of stock on the — day of —, as well for the interest of the said E. E. in the said stock as for the maintenance and education of the plaintiffs

up to that time; but the said defendants have retained in their hands the subsequent dividends which accrued due on the said stock, and have made no payments or allowances thereon for the maintenance or education of the plaintiffs.

And the plaintiffs further show that some proper person or persons ought be appointed as the guardian or guardians of the plaintiffs, with suitable allowances for their maintenance and education for the time past since the said — day of —, and for the time to come, and that the said sum of stock ought to be secured in this honorable court. To the end, therefore, etc. [*See No. 74.*]

And that the said defendants may answer the premises; and that some proper person or persons may be appointed the guardian or guardians of the plaintiffs, with suitable allowances for their maintenance and education for the time past since the said — day of —, and for the time to come, and that the said defendants may account for the dividends of the said trust stock which have accrued due since the said — day of —, and may thereout pay the allowances which shall be made for the maintenance and education of the plaintiffs since the said — day of —, and may pay the residue thereof into this honorable court for the benefit of the plaintiffs; and may transfer also the said sum of — pounds sterling three per cent. consolidated bank annuities into the name of the accountant-general of this honorable court, to be there secured for the benefit of the plaintiffs and such other persons as may eventually be interested therein. [*And for further relief.*] May it please, etc.

[*Verification, as in No. 85.*]

(1) A specific legatee, filing a bill for a general account of the administration, is not confined to the particular errors alleged in the bill, as he might be if he were surcharging and falsifying a stated account. *Pulliam vs. Pulliam*, 10 Fed. Rep., 53. See also No. 90, note 2.

No. 95.

Against an Executor by Legatees and the Administrator of a Deceased Legatee.

[Caption, and address, and introduction.]

Your orators and oratrix, administrator of the goods and chattels, rights and credits of F. K., late of, etc., deceased, H. K., the younger of, etc., and S. K., an infant under the age of twenty-one years, to wit, about the age of twenty years, by the said H. K., the elder, her father and next friend, show unto your honors that J. R., late of, etc., being possessed of, or well entitled unto, a considerable personal estate, duly made and published his last will and testament in writing, and a codicil thereunto annexed, the said will bearing date on or about the — day of —, and by his said will amongst other things gave and bequeathed unto your oratrix, S. K., the sum of \$—, to be paid to her at the age of twenty-one years or day of marriage, which should first happen. And the said testator also gave and bequeathed unto your orator H. K., the younger, the sum of \$—, to be paid to him on his attaining his age of twenty-one years. And the said testator, after giving divers other legacies, gave and bequeathed unto R. B. the defendant herein, and W. R. H., of, etc., and who departed this life in the lifetime of the said testator, the rest and residue of his estate and effects in trust, to be equally divided between such children of his, the said testator's niece M. K., as should be living at the time of his decease, and thereby appointed the said R. B. executor thereof. As in and by the said will, or the probate thereof, when produced to this honorable court will appear.

And your orators and oratrix further show unto your honors that the said J. R. departed this life on or about —, without revoking or altering his said will, save by the said codicil, and without revoking or altering the said codicil, or any part thereof; whereupon the said R. B., the executor in the said will named, duly proved the same in the proper court, and undertook the executorship thereof, and possessed

himself of the personal estate and effects of the said testator to a very considerable amount, and more than sufficient to discharge his just debts, funeral expenses, and legacies.

And your orators and oratrix further show unto your honors that the said F. K., in the said testator's will named, and your orator and oratrix H. K., the younger, and S. K. were the only children of the said M. K. in the said will named who were living at the time of the death of the said testator, and your orator H. K., the younger, became entitled to have and receive his said legacy of \$—— so bequeathed to him as aforesaid, and also his third part or share of the residue of the personal estate and effects of the said testator after payment of all his just debts, legacies, and funeral expenses; and your oratrix S. K., is entitled to have her said legacy of \$——, and also her third part or share of the said residue secured for her benefit until she shall attain her age of twenty-one years or day of marriage; and your orator H. K., the elder, is entitled, as such administrator of the said F. K., as aforesaid, to have and receive the remaining third part or share of the said residue. And your orators and oratrix further show unto your honors that the said F. K. departed this life on or about ——, intestate, and that since his death your orator, the said H. K., the elder, has obtained letters of administration of the personal estate and effects of the said F. K., to be granted to him by the proper court.

And your orators and oratrix further show unto your honors that your orator H. K., the younger, attained the age of twenty-one years on or about ——, and your orators and oratrix being so entitled as aforesaid, your orators have made frequent applications to the said R. B. to pay the said legacy of \$——, and the said two-third shares of the said residue; and your oratrix hath also applied to him, the said R. B., to lay out and invest her said legacy of \$——, and her third share of the said residue, upon some proper security, for her benefit, until she shall attain her age of twenty-one years or day of marriage, with which just and reasonable requests your orators and oratrix well hoped that the said defendant would

have complied, as in justice and equity he ought to have done. But now so it is, etc., he absolutely refuses so to do, sometimes pretending that the said testator never made any such will as is hereinbefore stated. Whereas your orators and oratrix charge the contrary thereof to be true, and so the said defendant will at other times admit. But then again he pretends that the said testator's personal estate was very small and inconsiderable, and not nearly sufficient to pay and satisfy his just debts and funeral expenses. Whereas your orators and oratrix expressly charge that the said personal estate and effects of the said testator were much more than sufficient to discharge the said testator's just debts, and funeral expenses, and legacies; and so it would appear if the said defendant would set forth a full, true, and particular account of all and every the personal estate and effects of the said testator come to his hands or use, and also a full, true and particular account of the manner in which he hath disposed of or applied the same, but which the said defendant refuses to do. All which actings, etc. [*See No. 73.*]

And that the said defendant may answer the premises; and that an account may be taken of the personal estate and effects of the said testator come to the hands of the said defendant, or of any person or persons by his order or for his use, and also of the said testator's funeral expenses, debts, and legacies; and that the same may be applied in a due course of administration; and that the said defendant may be decreed to pay to your said orator H. K., the younger, his said legacy of \$——; and that the clear residue of the said testator's personal estate and effects may be ascertained, and that such share thereof as shall appear to belong and be due to your orators respectively may be paid to them respectively, and that your oratrix's said legacy of \$——, and also such share of the said residue as she shall appear to be entitled to may be secured for her benefit; and that for those purposes all proper directions may be given. [*And for further relief.*] May it please, etc.

[*Verification, as in No. 85.*]

No. 96.

By an Executor and Trustee Under a Will, to Carry the Trusts Thereof into Execution (1).

[*Caption, address, and introduction.*]

The plaintiff, A. B., of, etc., is executor of the will and codicils of M. S., late of, etc., deceased, and also a trustee, devisee, and legatee named in the said will and codicils, and that the said M. S., at the several times of making her will and codicils hereinafter mentioned, and at the time of her death, was seized or entitled in fee-simple of or to divers messuages, lands, etc., of considerable yearly value, in the several counties of C. and D., in the state of —, and being so seized or entitled, and also possessed of considerable personal estate, the said M. S., on or about —, made her last will and testament in writing, and which was duly signed and attested, and published by her, according to law, and thereby, after giving divers pecuniary and specific legacies, and divers annuities, the said testatrix gave and devised unto the plaintiff all, etc. [*Stating the substance of the will* (2).] And the said testatrix afterwards, on or about —, made a codicil to her said will, which was duly signed, attested, and published according to law, and thereby gave, etc., and in all other respects she thereby confirmed her said will and all other codicils by her theretofore made; as by said will and the said several codicils thereto, or the probate thereof, to which the plaintiff craves leave to refer, when produced, will appear.

And the plaintiff further shows that the said testatrix M. S. departed this life on or about —, without having revoked or altered her said will and codicils, save as such will is revoked or altered by the said codicils, and as some of the said codicils have been revoked or altered by some or one of such subsequent codicils; and the said testatrix at her death left the said E. G., formerly E. S., and the said B. S., her cousins and co-heiresses at law. And the plaintiff being

by the said codicil of the — day of —, appointed sole executor of the said will and codicils, has since her death duly proved the said will and codicils in the proper court, and taken upon himself the execution thereof.

And the plaintiff further shows that the said testatrix, at the time of her death, was possessed of, interested in, and entitled unto considerable personal estate and effects, and, amongst other things, she was entitled to an eighth share and interest in a certain copartnership trade or business of a tin-blower and tin-melter, which was carried on by the testatrix and certain other persons at —, under the firm of S. F. & Co., in which the testatrix had some share of the capital, and which was a profitable business, and by the articles of copartnership under which the said business was carried on, the plaintiff, as the said testatrix's personal representative, is now entitled to be concerned in such share of the said business for the benefit of the said testatrix's estate; and she was also possessed of or entitled to certain leasehold estates held by her for the remainder of certain long terms, etc.

And the plaintiff further shows that he has possessed himself of some parts of the testatrix's personal estate, and has discharged her funeral expenses, and some of her debts and legacies, and the plaintiff has also, so far as he has been able, entered into possession of the said testatrix's estates, which she was seized of or entitled to at the times when she made her said will and codicils, and which consisted of, etc., being all together of the yearly value of — dollars or thereabouts, besides the said mansion-house, and besides the premises, which, by the said codicil, dated on the — day of —, are devised to the plaintiff for his own use and benefit; and the plaintiff is desirous of applying the said testatrix's personal estate and effects, not specially bequeathed, in payment of the said testatrix's debts, and of her legacies now remaining unpaid, and of the annuities bequeathed by the said will and codicils, so far as the same will extend, and of paying the remainder thereof out of the rents and profits of the said

real estate, and of applying the whole of the rents and profits, according to the directions of the said will and codicils, as in justice and equity ought to be the case.

But now so it is, may it please your honors, that the said C. D. and E., his wife, B. S., and J. S., in concert with each other, make various objections to the plaintiff's applying the said personal estate, and the rents and profits of the said real estate, according to the directions of the said will and codicil; and the said defendants, C. D. and E., his wife, sometimes pretend, that by virtue of the said testatrix's will, they are entitled to the residue of the said testatrix's personal estate, not specifically bequeathed, including all her household estates, after payment of all her funeral expenses and debts, and that the said personal estate is not subject to the payment of the several legacies and annuities given by the testatrix's said will and codicils, but is exempt therefrom, and that all the said legacies and annuities ought to be paid out of the rents and profits of the said testatrix's real estates.

Whereas the plaintiff charges the contrary of such pretenses to be true, and that the said personal estate is applicable to the payment of all the said testatrix's legacies and annuities, after satisfying all her funeral expenses and debts; and the said C. D. and E., his wife, are desirous that the plaintiff, as the personal representative of the said testatrix, should, by means of the said testatrix's share of the capital employed in the said trade or business, carry on the said trade or business for the benefit of them and of the said testatrix's estate, but which the plaintiff can not safely do without the direction and indemnity of this court; and the said C. D. alleges that he is not of ability to maintain and educate his said son, J. S., who is an infant of the age of ten years or thereabouts, and he therefore claims to have some part of the rents and profits of the said premises paid to him, for the maintenance and education of the said J. S.; and the plaintiff, under the circumstances aforesaid, is unable to administer the said personal estate, and to execute the trusts of

the said real estates, without the directions of this honorable court, and the defendants are desirous of having a person appointed by this court to receive the rents and profits of the said real estates, devised as aforesaid by the said fifth codicil, to which the plaintiff has no objection. In consideration whereof, etc. To the end, therefore, etc.

And that the trusts of said will and codicil may be performed and carried into execution by and under the direction of this court, and that an account may be taken of the said testatrix's personal estate and effects, not specifically bequeathed, and of her funeral expenses and debts, and of the legacies and annuities bequeathed by the said will and codicils, the plaintiff being ready and hereby offering to account for all such parts of the said personal estate as have been possessed by him, and that the said personal estate may be applied in payment of the said funeral expenses, debts, and legacies and annuities in a due course of administration, and that the clear residue, if any, of the said personal estate may be ascertained and paid to the said defendants, C. D. and E., his wife, in her right; and in case it shall appear that the said personal estate, not specifically bequeathed, is not sufficient for payment of all the said funeral expenses, debts, legacies, and annuities, or that any parts thereof are not payable out of such personal estate, then that proper directions may be given for payment of such deficiency, or of such parts thereof as are not payable out of the said personal estate, according to the trusts of the said term of one hundred years, vested in the plaintiff as aforesaid, and that an account may be taken of the rents and profits of the said real estates, comprised in the said term received by or come to the hands of the plaintiff, and that the same may be applied according to the trusts of the said term; and that proper directions may be given touching the effects specifically bequeathed by the said will and codicils as heirlooms, and that proper inventories may be made thereof; and that all necessary directions may be given touching the application of a

sufficient part of the rents and profits of the said real estates to the maintenance and education of the said J. S., in case this court shall be of opinion that any allowance ought to be made for that purpose; and that a proper person may be appointed by this honorable court to receive the rents and profits of the said real estates devised as aforesaid by the fifth codicil. [*And further relief.*] May it please, etc.

[*Pray subpoena against C. D. and E., his wife, B. S., and J. S., and verify as in No. 85.*]

(1) In pleading a trust concerning lands it need not be alleged that it was created by writing; this will be presumed if the statute requires a writing in order to create such a trust as the bill alleges. *Lamb vs. Starr, Deady* (U. S.) 350. Equity will enforce all lawful trusts. If a trust should be created for an illegal or fraudulent purpose, equity will not enforce it, nor, it seems, relieve the person creating it, by setting aside the conveyance. When, however, a trust is unlawful because forbidden by statute, the whole disposition is void. *Pom. Eq. Jur.*, Sec. 987.

(2) As to jurisdiction of Federal Court, see No. 86, note 2.

No. 97.

To Cancel a Written Instrument—a Bill of Exchange (1).

[*Caption, address, and introduction.*]

That your orator, previously to the month of —, had frequently accepted bills of exchange for the accommodation of Messrs. D. W. and J. H., then of —. And that some time in or about the said month of — they applied to your orator to assist them with a loan of his acceptance for a sum of money, and they severally assured your orator that if he would accept or indorse a certain bill of exchange for them, the said D. W. and J. H., they could procure the same to be discounted, and that they, or one of them, would punctually provide your orator with the money to take up the same. And your orator, relying upon such promise, agreed to accept such bill of exchange to be drawn upon him by the said D. W.,

and J. H. accordingly drew upon your orator a certain bill of exchange for the sum of — dollars (2), dated the — day of —, and payable three months after date, which your orator thereupon accepted.

And your orator further shows unto your honors that the said bill of exchange having been delivered by your orator to the said D. W. and J. H., without any consideration whatsoever had or received by your orator for the same, the said D. W. and J. H. ought either to have provided your orator with the money to take up the same when due, as they had promised, or else have redelivered the same to your orator to be canceled; and your orator hoped that the said defendants would have provided your orator with the money to take up the said bill of exchange when the same became due, or else would have redelivered the same or caused the same to have been redelivered to your orator to be canceled, and that no proceedings would have been had against your orator to recover the amount thereof, as in justice and equity ought to have been the case.

But now so it is, may it please your honors, that the said D. W. and J. H., combining and confederating to and with J. J., of, etc., and T. O., of, etc., and with divers other persons, etc., they, the said confederates, absolutely refuse to deliver or cause or procure to be delivered up to your orator the said bill of exchange to be canceled, and instead thereof the said T. O. hath got into his possession the said bill, and has lately commenced an action at law against your orator to recover the amount thereof, the said confederates, or some of them, at times giving out and pretending that the said bill of exchange was made and given by your orator to the said D. W. and J. H. for a full valuable consideration or considerations in money.

Whereas your orator expressly charges the contrary thereof to be the truth, and that your orator never had or received any good or valuable consideration or considerations for the said bill of exchange, and that the same was delivered by him to

the said D. W. and J. H., for their accommodation, without receiving any consideration or considerations for the same, and upon the firm reliance that they, or one of them, would supply your orator with the money to take the said bill up when the same became due and payable, and so the said confederates will sometimes admit; but then the said confederate J. J. pretends that he discounted the said bill of exchange for full valuable considerations in money or otherwise at the time when the said bill was indorsed to him, and that when he paid or gave the full valuable consideration or considerations for the same, he had not notice that the said bill had been given by your orator in the manner and upon the express stipulations hereinbefore mentioned, or without a full valuable or any consideration received by your orator for the same, and that therefore your orator ought to pay the amount thereof. And the said J. J. further pretends that he indorsed the said bill of exchange to the said T. O. for good and valuable considerations before he, the said J. J., received any notice from your orator, and before your orator had requested him to deliver up the same. Whereas your orator charges the contrary of all such pretenses to be true, and particularly that the said J. J. did not ever give, pay, or allow to the said D. W. and J. H., or either of them, the full value or any consideration whatever, for the said bill of exchange; and that the said J. J. had full notice, or had some reason to know, believe, or suspect that the said bill had been given by your orator to the said D. W. and J. H., in the manner and upon the express stipulation hereinbefore mentioned, and without any valuable or other consideration having been received by your orator for the same.

And your orator further charges that the said J. J. received the said bill from the said D. W. and J. H., to get the same discounted for them, and with an express undertaking on his part to deliver over the money he obtained upon such bill to them, the said D. W. and J. H., but that he never did procure such bill to be discounted, or if he did he applied the moneys

he obtained upon the same to his own use, and never paid or delivered over any part thereof to the said D. W. and J. H., or either of them.

And your orator further charges that the said J. J. has received notice from your orator and the said D. W. and J. H., of the terms upon which the said bill had been obtained by the said D. W. and J. H., and had been required by your orator to deliver up the same to him before he, the said J. J., had indorsed the said bill of exchange to the said T. O., and as evidence thereof your orator expressly charges that the said J. J. had the said bill of exchange in his custody, possession, or power on the — day of —, last past; and that the said J. J. did, on the — day of —, last, offer the said bill of exchange for sale, together with other bills, to various persons.

And your orator further charges that at the time of the said bill of exchange being indorsed or delivered to the said T. O., **and** of his paying or giving such consideration or considerations (if any were or was paid by him) he knew, or had been informed, or had some reason to know, believe, or suspect that your orator and the said D. W. and J. H. had never received the full or any consideration for the said bill of exchange, and he well knew or had been informed that your orator had accepted the said bill of exchange for the accommodation of the said D. W. and J. H., without having received any consideration for the same.

And your orator further charges that the said T. O. is a trustee for the said bill of exchange for the said confederate J. J., or for some other person or persons whose names he refuses to discover, and that he holds the same for the said confederate J. J., or for such person or persons, without having given any consideration or considerations for the same, and that if he receives the amount of the said bill of exchange, or any part thereof, he is to deliver over or pay the same to the said J. J., or such other person or persons, and that he is indemnified by the said J. J., or such other person

or persons, from all the costs attending the attempt to recover upon the said bill of exchange on which he has brought his said action at law. And notwithstanding the said T. O. got the said bill of exchange into his possession without giving any consideration for the same, yet he threatens and intends to proceed in his action at law, and in case he should recover judgment to take out execution against your orator for the amount thereof.

And your orator further charges that the said several defendants, or some, or one of them, now have or has or lately had in their or one of their custody, possession, or power, some book or books of accounts, letters, documents, or writings from which the truth of the several matters and things aforesaid would appear. And so it would appear if the said defendants would set forth a full, true, and particular account of all such books of account, letters, documents, and writings. All which actings, etc. [*See Nos. 70, 72, and 74, as to the interrogating, the stating and charging parts*]. And that the said defendant T. O. may be decreed to deliver up, and the said D. W. and J. H. and J. J. be decreed to procure, the said bill of exchange to be delivered up to your orator to be canceled, as having been given by your orator and received by the said D. W. and J. H., and the said several defendants, without any consideration. And that the said defendants, respectively may be restrained by the injunction of this honorable court from proceeding in any action at law already commenced against your orator upon the said bill of exchange, and from commencing any other proceedings at law against your orator upon the said bill of exchange. And that your orator may have such further and other relief in the premises as to your honor shall seem meet, and the nature of this case may require. May it please, etc. [*Pray subpoena and injunction against all the defendants, and verify as in No. 85.*]

(1) Mistake of law is no ground for relief if it consists of mere ignorance of law on part of complainant. *Allen vs. Elder*, 2 Am. St.

Rep., 63. But it is otherwise of an honest mistake of law on part of both parties. *Allen vs. Elder*, 2 Am. St. Rep., 63.

To reform written instruments on ground of mistake it must be clearly established, but relief will not be withheld because there is conflicting testimony. *Hutchinson vs. Ainsworth*, 2 Am. St. Rep., 823.

See *Fuller vs. Percival*, 126 Mass., 381, where a firm note fraudulently given by a partner of the plaintiff to a holder with notice of the fraud was canceled. So in an action on a note given for the price of land, defendant may have the note canceled to the extent of the damages sustained by him by reason of false representations in the sale. *Hosleton vs. Dickinson*, 51 Iowa, 244.

(2) Must exceed \$2,000 to give circuit court jurisdiction. See Act of March 3, 1887, as amended March, 1888; 25 Stat. at L., 433.

No. 98.

To Enforce Specific Performance of a Contract to Make a Policy of Insurance (1).

To the Judges of the Circuit Court of the United States for the — of —:

The A. B. Insurance Company, a corporation duly established by the laws of the state of —, doing business at the city of —, in the state of —, brings this its bill of complaint against the C. D. Marine Insurance Company, a corporation duly established by the laws of the commonwealth of Massachusetts, doing business at the city of —, in said commonwealth, and inhabitant of said — district of —.

And thereupon your orator complains and says that in and by its charter and by the laws of the state of —, it was, on the — day of —, and ever since has been, authorized and empowered to make insurance, among other things, against loss by the perils of the seas and against loss by fire; that your orators on the said — day of —, underwrote and caused one D. — to be insured for whom it might concern, payable in the event of loss to the said D. M., on one eighth of the good ship Republic, the said ship having been valued at — dollars, the sum of — dollars, for the term

of one year at and from the — day of —, at noon, until the — day of —, at noon, against loss from sundry designated risks, and especially from loss from the perils of the seas and from loss by fire, as will more fully appear from a copy hereunto annexed and made a part of this bill, of the policy issued by your orator to the said D. M., and marked "A."

Your orator further says that thereafter the aforesaid insurance so made by your orator upon the Republic, and on the night of the — day of —, the said ship was totally destroyed and lost by fire, one of the perils insured against; that your orator thereupon became liable to pay, and thereafter such loss did pay, to the said D. M., the full sum of — dollars, the amount so as aforesaid by your orator underwritten.

Your orator further says that after it had insured the said D. M., as aforesaid, and before the loss aforesaid of the said ship, and before the commencement of the fire by which its destruction was produced, your orator requested and authorized C. W., of — aforesaid, insurance broker, to cause and procure your orator to be reinsured in the sum of — dollars upon the said Republic, for the term of six months, against all and singular the risks by your orator theretofore assumed, and especially against loss from the perils of the seas and from fire.

Your orator further says that the said C. W., as the agent of your orator, in that behalf duly authorized and in its name and behalf, on Saturday, the — day of —, made application to the said defendant for the reinsurance by it of your orator upon the said Republic, in and for the sum of — dollars, for the term of six months from the — day of — aforesaid, against such risks as your orator had assumed, and especially against loss from the perils of the seas and against loss from fire; that the said application so made by the said C. W. was made at the office and usual place of business of the said C. D. Marine Insurance Company in the city of —;

that it was so made in the first instance to the secretary of the defendant, and immediately thereafter, and on the day last aforesaid, to G. H., the president of the defendant, who was duly authorized to receive and act thereupon for the defendant.

Your orator further says that upon the making of the said application, the said G. H., after consulting and advising with some person then present, whose name is to your orator unknown, replied to the said C. W. that the defendant would reinsure your orator, in the sum of — (2) dollars, upon the said Republic, and would assume the risks proposed for the term of one year, at and for a premium of six percent upon the sum to be underwritten; that they would insure against the said risks for the term of six months, at and for a premium of three and one half of one percent upon the sum to be insured.

Your orator further says that the said C. W., immediately thereafter the said application, communicated to your orator the terms upon which the said defendant would reinsure your orator upon the said Republic.

Your orator further says that on the — day of —, your orator, upon being advised by the said C. W. as aforesaid, directed, authorized, and requested the said C. W., in the name and behalf of your orator, to accept the terms aforesaid, for six months, and to procure for your orator a reinsurance, in accordance therewith, from the — day of — aforesaid.

Your orator further says that the said C. W. as agent, and in behalf of your orator, on Monday, the — day of the said —, at or about eleven o'clock before noon, at the place of business of the said defendants in —, and before any loss or damage had occurred to the said Republic, notified the said G. H. that your orator had accepted the proposition of the defendants to reinsure your orator for the term of six months from the — day of December aforesaid, at noon.

Your orator further says that on the said — day of —, and before any loss or damage had occurred to said ship, the above-named C. W., in behalf of your orator, embodied in a paper, partly printed and partly written, the terms of the contract of reinsurance, so, as aforesaid, on the — day of —, in answer to the aforesaid application, proposed to your orator by the said defendants, and so as aforesaid accepted on the morning of the — day of —.

Your orator further says that the said paper was examined, approved, and retained by the said G. H., he in this behalf acting for the defendant, and by him was, in the name of the defendant, assented to, and thereupon a contract of reinsurance by and between the defendant and your orator was complete and concluded, upon the terms in said paper contained, by force whereof the defendant became and was liable and agreed to and with your orator to pay to it the sum of — dollars, in the event that the said ship Republic should be lost or damaged within six months from and after noon of the said — day of —, by the perils of the seas or by fire.

Your orator further says that the said G. H., in behalf of the defendant, and in its name and behalf, agreed with the said C. W., he acting for your orator, that a policy should be prepared and executed by the said defendant to your orator, at the early convenience of the defendant, and delivered to your orator; containing, with other usual and accustomed clauses, the terms of the contract of reinsurance, so as aforesaid concluded by and between your orator and the defendant, and so as aforesaid embodied and set forth in the paper aforesaid.

Your orator further says that the said C. W., on the — day of —, aforesaid, was authorized, ready, and willing, in behalf of your orator, to pay to the defendant, or secure to its satisfaction, at its election, the premium, so as aforesaid agreed upon, on the said reinsurance, but the same was not then paid, because the defendant was accustomed not to receive the premiums by it required in its contracts of insurance

until the preparation and delivery of the policies by them agreed to be issued.

Your orator further says that the said C. W., on the said — day of —, immediately upon the conclusion of the aforesaid contract of reinsurance, advised your orator of its completion.

Your orator further says that the said C. W., on Tuesday, the — day of —, aforesaid, notified the defendant that the said ship had been destroyed by fire and was totally lost, and at the same time asked E. R., secretary at the time of the defendant, in the presence and hearing of the said G. H., at the office of the said defendant, if the policy had been prepared for your orator, to which the said E. R., in the hearing of the said G. H., said no, assigning no reason for the delay, or intimating any refusal to execute such policy.

Your orator further says that the said C. W., on Wednesday, the — day of —, called a second time at the office of the defendant, and asked for the said policy, to which the said G. H. replied, he was in doubt whether the contract was complete and obligatory, as it was made on a day regarded as Christmas-day, but he, the said G. H., had not made up his mind about it, and did not want to talk on the subject then.

Your orator further says that one F. S., on the — day of —, in behalf of your orator, made a draft upon the defendant for the sum of — (2) dollars, the amount of said reinsurance, less the premium, payable at sight, to J. S., your orator's vice-president, which draft was thereafter, on the — day of —, presented to the defendant, which they refused to pay or accept.

Your orator further says that the said C. W., in behalf and in the name of your orator, in that behalf duly authorized, on the — day of —, at the office of the defendant, made demand upon the aforesaid G. H. for the execution and delivery of the policy so as aforesaid by the said defendant therefore agreed to be by it executed and to your orator to be delivered, and at the same time tendered to the said defendant

the sum of —— dollars as and for premium, interest, and cost of policy, with which request the said G. H., in the name of the said defendant and in their behalf, refused to comply.

Your orator further says that it has applied to the defendant for a copy of the aforesaid paper so left with it on the —— day of ——, which it refused to furnish.

And your orator well hoped that the defendant would have complied with the reasonable requests of your orator.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may, according to the best and utmost of its knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogations hereinafter numbered and set forth as by the note hereunder written it is required to answer, that is to say: [*Here set forth the questions.*]

And your orator prays that the defendant may discover and produce the original paper or memorandum, so as aforesaid made by said C. W., and dated —— day of ——, which was so as aforesaid left with their president at their place of business on the aforesaid —— day of ——.

And that the said agreement of the defendant to execute and deliver to your orator a policy of reinsurance, according to the terms of the aforesaid paper, and in accordance with the defendant's contract of insurance as aforesaid, may be specifically performed, your orator hereby undertaking to perform its undertakings in the premises.

And that the said defendant may be decreed to pay to your orator the sum of —— dollars, the sum so as aforesaid by them reinsured to your orator, with interest thereon. And that your orator shall have such other and further relief as the case may require and as shall seem meet to the court, and as shall be agreeable to equity and good conscience.

And your orator prays this honorable court to issue a writ of *subpoena* in due form of law according to the rules of this court, to be directed to the C. D. Marine Insurance Company,

a corporation by the law of Massachusetts, at —, commanding it on a certain day and under a certain penalty to be and appear before this honorable court, and to stand to, abide, and perform such order and decree therein as to this court shall seem meet, and as shall be agreeable to equity and good conscience.

The A. B. Insurance Company,
By R. X., its Solicitor.

S: X., Counsel.

[*Verification, as in No. 85.*]

(1) Union Mut. Ins. Co. *vs.* Commercial Mut. Mar. Ins. Co., 2 Curt, 524. See also Taylor *vs.* The Merchants Fire Ins. Co., 9 How., 360; Herbert *vs.* Mut. L. Ins. Co., 12 Fed. Rep., 807; Brugger *vs.* State Inv. and Ins. Co., 5 Saw., 304; S. C. 8 Ins. Law. Jour., 293.

(2) See No. 86, note 2.

No. 99.

To Reform a Policy of Insurance (1).

[*Caption, Address, and Introduction.*]

And thereupon your orator complains and says that on the — day of, etc., he was the sole owner of a ship or vessel of the value of — dollars, called the —, then lying at Q., in the province of —, and bound on a voyage from said Q. to a port of discharge in said U. K., on board which said ship there had been and was then laden a cargo of merchandise, the property of various persons other than your orator, and which said merchandise your orator has agreed should be conveyed in said ship, from said Q. to said port of discharge, for a certain amount of hire, or freight, to be paid him by said parties respectively therefor, amounting in the whole to the sum of — dollars. And your orator being desirous to procure said vessel and said freight to be insured for said voyage, at and from said Q. to said port of discharge, namely, the said ship for the sum of — dollars, valued at — dollars, and said freight for the sum of — dollars, valued at —

dollars, against the perils of the seas and other risks usually contained in marine policies of insurance, on property of such description, did, in writing, by letter, bearing date, etc., request his agent, one J. E., of said Q., to procure the same to be insured on account of your orator, and to have the policies of insurance thereon in the name of your orator, a copy of which letter, marked "A," your orator hereto annexes, and prays that the same may be taken as a part of this his bill of complaint.

And your orator further shows that said J. E. afterwards, on the — day of the same —, in compliance with the request of your orator, did, through one H. M., of —, broker, request one A. M., of the city of —, and state of —, insurance broker, to procure said insurance upon said ship and said freight, to be made and effected at some proper and solvent insurance company in said —, or in —, in said State of —, and did cause to be transmitted to said A. M., insurance broker as aforesaid, a copy of your orator's said letter, bearing date the said —; and thereupon the said A. M. being unable to procure said insurance to be made and effected for a reasonable premium in said —, did, in writing, authorize and request one D. R., of said —, commission merchant, to cause said insurance to be made and effected by some proper insurance company in said —, which said written request and authority so given by said A. M. to said D. R. was and is contained in two certain letters written by the said A. M. to said D. R., one of which letters bears date, etc., and the other of said letters bears date, etc.; and your orator hereto annexes copies of both said letters, marked respectively "B" and "C," and prays that the same may be taken as parts of this his bill of complaint.

And your orator further shows that in said letter of said A. M., bearing date, the etc., by accident and mistake the said D. R., was directed to cause said ship to be insured for the sum of — dollars, to be valued at the sum of — dollars, and said freight to be insured at the sum of — dollars, and

to be valued at the sum of — dollars; and in and by said letter of said A. M., bearing date the said —, said mistake was in part corrected, and said D. R. was directed to insure said ship for the sum of — dollars, and to insure said freight for the sum of — dollars; but by accident and mistake the sum for which said ship and said freight were to be valued thereon was wholly omitted.

And your orator further shows that the said D. R., after receiving said letters on the —, did apply to the said C. M. Marine Insurance Company to make insurance upon said ship and freight for your orators, according to the order and request of the said A. M., and did then and there exhibit both said letters of said A. M. to said insurance company, with the intent to inform said insurance company as well of the relation of said A. M. as agent of the owners of the said ship as to enable them to determine the character of the risk to be insured, and said insurance company did afterwards read and examine said letters, and on the same day did agree with the said D. R., acting as agent of your orator, to insure the said ship on the voyage aforesaid, at and from said Q., for the sum of — dollars, to be valued at the sum of — dollars, and to insure the said freight of said ship on said voyage for the sum of — dollars, to be valued at the sum of — dollars, and to receive as premium therefor the sum of — dollars.

And your orator further shows that thereafterwards, on the, etc., —, the said insurance company, with the intent and design to carry into effect said agreement, did cause to be made a writing, or policy, of insurance, signed by the president and secretary, bearing date, etc., a copy of which is hereto annexed, and marked "D," which your orator prays may be taken as part of this his bill of complaint, and did deliver said policy to said D. R., the agent of your orator, as aforesaid, and did receive from said D. R., the agent of your orator, said premium of — dollars, which sum was thereafterwards by your orator repaid to said D. R.

And your orator further shows that although, when said insurance company had so agreed to insure said ship and freight for the amounts aforesaid, it was well known to said insurance company that said A. M. was merely the agent of the owner of said ship and of the person entitled to, and solely interested in, said freight; and that he, said A. M., had no insurable or other interest whatever in either said ship or said freight, and that said A. M. was, by profession and pursuit, a mere insurance broker, and that he was acting as the agent of the person who owned said ship and who was solely interested in said freight, and yet by accident and mistake said insurance on said ship and said freight was, by the terms of said policy, etc., declared to be on account of said A. M., and without adding thereto the word agent or any other term indicating that he, the said A. M., was insured as said agent of the party owning said ship and interested in said freight, and without the usual clause, commonly inserted in such policies, that said insurance was effected for whom it might concern.

And your orator further shows that said insurance company knew, and was distinctly informed by said D. R. by said letter of said A. M. to said D. R., bearing date, etc., and submitted to and read by them as aforesaid, that said A. M. was the mere agent of and broker for the owner of said ship, and had no interest whatever in said ship or freight, except so far as he would be entitled to the usual commission of a broker for procuring said insurance; and the said insurance company did agree, consent, and understand at the time said agreement to insure said ship and freight was made with said D. R., and before said policy so made to carry said agreement into effect was written and signed, that said insurance was to be made for the benefit and on account of the owner of said ship; and that said A. M. was not the owner of said ship nor interested therein or in said freight, and that by mere inadvertence, accident, and mistake in writing said policy of insurance it was omitted to be inserted in said

policy that said insurance was made on account of said A. M. as agent and for whom it might concern.

And your orator further shows unto your honors that said policy was received by the said D. R. and transmitted to the said J. E., the agent of your orator, and by him kept and retained in ignorance that by the terms and legal effect thereof no other interest was insured thereby save that of the said A. M., and in the full understanding as well by said A. M., said D. R., and said J. E., that the interest of your orator in said ship and freight, to the extent of the sums named in said policy, was thereby insured and protected, in accordance with your orator's directions contained in his said letter to said J. E., bearing date the said, etc.

And your orator further shows, etc. [*Here state the loss of, etc.*]

And your orator submits to your honors that, by reason of the premises, he is justly and equitably entitled to have said mistake so made in drawing said policy of insurance corrected, and said policy reformed by inserting therein that said insurance was made on account of A. M. as agent, or for whom it may concern; and that the sums so insured by said company on said ship and said freight be paid to him accordingly.

And your orator further shows unto your honors that previously to this suit being commenced, on the—— day of——, and since, he applied to and requested, and caused application to be made to, said insurance company, to act towards your orator in such a way as is equitable and just, and to reform said policy as aforesaid, and to adjust and pay to him the sums so insured by them on said ship and said freight, and so lost to your orator as aforesaid by reason of the perils insured against in said policy, and exhibited to said insurance company the usual and proper proofs of said agency of said A. M., and of said loss, and of his sole ownership of said ship and sole interest in said freight at the time of said agreement so made with the agent of your orator by said

insurance company to insure the same as aforesaid, and your orator well hoped that said insurance company would have yielded to his said applications and paid to him the sums so insured by them and lost by him as aforesaid. [*Pray relief and process.*]

(1) See No. 86, note 2.

No. 100.

To Enjoin the Obstruction of a River (1).

The Circuit Court of the United States,

— District of —.

The United States of America, Plaintiffs,

vs.

The C. & D. Railroad Company, Defendant.

} In Equity.

To the Honorable Judges of the Circuit Court for the —
District of —.

The United States of America, by their attorney, J. H., and under the direction of the attorney-general of the United States, the plaintiffs, respectfully show unto your honors that the defendant, the C. & D. Railroad Company, is a corporation, duly incorporated under the laws of the state of —, and is a citizen and inhabitant of the — district of —, and having its chief office of business in the city of —, in said state, where it is carrying on the business of a railroad company, transporting freight and passengers, is unlawfully creating an obstruction, not affirmatively authorized by law, to the navigable capacity of the — river, a public highway of commerce and intercourse between the states, and a river in respect to which the United States have jurisdiction.

Your orators further say that the said corporation, defendant, is in possession of, occupies and uses a certain lot and tract of land along the river bank, between the [*city water works*] and the lower side of — street, in the city of —, county of —, and state of —, and which said lot of land

runs south to the edge and low-water mark of the —— river, and which said lot, with the buildings thereon, consisting of tracks, warehouses, and other superstructures, is and are used for the business of said railroad company, and which said land and premises form the bank and shore of the waters of the —— river.

And your orators further show that the said corporation is casting, emptying, unloading, and suffering and causing to be cast, emptied and unloaded, large quantities of slate, gravel, rubbish, slags, earth, cinders, waste, refuse and other materials into the said —— river, a navigable river of the United States, tending to impede and obstruct the navigation and the navigability of said waters of the United States; and the said defendant is depositing and causing to be deposited, and suffering to be deposited and placed, large quantities of slate, stone, gravel, earth, rubbish, wreck, refuse, waste and other materials on the shore and bank of said —— river south of and upon the land occupied as the premises of the defendant, where the same is liable to be washed into the navigable waters of said —— river by the ordinary floods and rises of said river, to the permanent obstruction and detriment of its navigation, and contrary to the provisions of Section 6 of an Act entitled "An Act making appropriation for the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes," approved September 19, 1890 (2), and to the irreparable injury, obstruction and detriment of the said river, for which your orators have no adequate remedy at law.

And this casting, emptying and unloading of which your orators complain, is not for the purpose of being used in the building, repairing or keeping in repair any quay, pier, wharf, weir, bridge, building or other work lawfully erected or to be erected on the banks on sides of said navigable river, or to the casting out, unlading or depositing of any material excavated for the improvement of said river, or the depositing of any substance above mentioned under a permit from

the secretary of war, in any place designated by him where navigation would not be obstructed, as allowed and permitted as set forth in the proviso to section 6 of the act aforesaid.

Your orators therefore pray that a writ of injunction may issue to the said C. & D. Railroad Company, perpetually enjoining it from making said obstruction, and creating and continuing to create said unlawful obstruction to the navigability of the said waters of the — river, and perpetually enjoining it from filling and dumping said material along the river bank between the [*city water-works*] and the lower side of — street, in said city, except so far as may be necessary to protect their railroad tracks from the wash of the river; and this last-named filling not to exceed a width of six feet beyond the outer rail of the tracks of said railroad as now laid down; and if it shall be found by this honorable court that the defendant is creating and making the said unlawful obstruction to the navigability of the said waters of the — river, as set forth in this bill, that the defendant be also ordered to remove the same; and that a writ of subpœna may issue to said C. & D. Railroad Company requiring it to answer, not under oath, this bill of complaint and the various matters therein set forth; and that a temporary restraining order may issue enjoining it from further dumping or depositing the material as aforesaid, as specifically set forth in this paragraph, until the final hearing of this cause, and for other and further relief as may be proper in the premises.

J. H.,

United States Attorney for the
— district of —

The United States of America,
— District of —, ss.

Now comes J. H., attorney for the United States, and says that he has read the foregoing bill of complaint, and believes the facts stated therein to be true.

J. H.

Sworn to before me and subscribed in my presence this
— day of —, 1894.

J. N.,

[*Seal.*]

United States Commissioner
for said district.

(1) Taken from the record in U. S. *vs.* The Louisville & Nashville Railroad Company, in the Circuit Court of the United States for the Southern District of Ohio.

(2) See 26 Stat. at L., 426.

No. 101.

To Cancel Decree of Naturalization.

[Caption and address.]

The United States, by W. H., their attorney-general, and J. H., the United States attorney for the — district of —, bring this their bill against C. D., a resident of the city of —, in the district aforesaid, and an alien and subject of the — of —.

And thereupon your orators complain and say that on or about the — day of —, 18—, the said defendant, who was and now is an alien and subject of the — of —, appeared in the — court, it then being a court of record of the state of —, purporting to have common-law jurisdiction, and a seal and clerk, and at a term and session thereof then being holden in the city of —, within the district aforesaid, and applied to be admitted a citizen of the United States.

That thereupon said court, on the day and year last aforesaid, entered up a decree purporting to admit said defendant to be and become a citizen of the United States, under the provision of section 2167 of the Revised Statutes of the United States, in and by which decree it is recited, among other things, that said defendant had proven to the satisfaction of the court, by the testimony of one S. T., that he had arrived in the United States a minor under the age of eighteen years; that he had resided in the United States at least five years, including the three years of his minority, and in the state of — at least one year immediately preceding his said application, and that for three years prior thereto it had been *bona fide* his intention to become a citizen of the United States. That thereupon a certain copy of said decree as aforesaid was

delivered to said defendant, who ever since has claimed, by virtue of said pretended decree, and not otherwise, to be a duly naturalized citizen of the United States, and now claims that by virtue of said proceedings he is such citizen, and as such is entitled to all the rights, privileges and franchises of a citizen of the United States, and claims to be entitled to the protection of the United States as a citizen thereof.

Your orators state and charge that it is not true that the said defendant was a minor under the age of eighteen years when he arrived in the United States; it is not, nor was it then, true that he had resided in the United States for three years next preceding his arriving at the age of twenty-one years; it is not, nor was it then, true that he had resided in the United States at least five years, including the three years of his minority; it is not, nor was it then, true that it had been *bona fide* his intention, for two years next preceding the date of his application, to become a citizen of the United States.

And your orators further state and charge that the decree aforesaid was obtained by defendant from the court aforesaid by fraud and perjury, willfully and knowingly committed at and before the court aforesaid, which fraud and perjury was and is that the defendant introduced witnesses for the purpose of obtaining the said decree, who, having been duly sworn, willfully testified falsely in substance and to the effect following, to wit, that said defendant was under the age of eighteen years when he arrived in the United States, and that he had resided in the United States three years next preceding his arrival at the age of twenty-one years, whereas, as the said defendant and said witnesses well knew, such were not the facts, nor were any of such facts known to any of said witnesses.

And your orators charge that the facts aforesaid, as to the qualifications of defendant, were not proven or made to appear to the satisfaction of the court aforesaid by the testimony of any witness who had any knowledge thereof, nor in any lawful manner, nor by any competent or lawful testimony whatsoever, and that said decree was based upon the fraudulent

and false testimony aforesaid, and said court was induced to render it by and through mistake as to the true facts, as well as by the fraud and perjury aforesaid, and the imposition practiced upon it by said defendant.

And your orators further charge and represent that said defendant did then and there, on the hearing of his said application, make and cause to be made, in, to and before said last-named court, with the intent to procure and to aid in procuring his naturalization as aforesaid, and the issue of the certificate of citizenship to him, a false statement, which was and is that the said defendant, at the time he arrived in the United States, was under the age of eighteen years, and had resided in the United States three years next preceding his arrival at the age of twenty-one years; whereas, in truth and in fact, as the said defendant then and there well knew, he was not, at the time he arrived in the United States, under the age of eighteen years, and had not resided in the United States three years next preceding his arrival at the age of twenty-one years.

Your orators further charge and represent that for the purpose of obtaining said decree said defendant did then and there, on the hearing of said application, commit a fraud upon the plaintiffs and said court by then and there intentionally and knowingly concealing from said last-named court the facts that at the time he arrived in the United States he was over the age of eighteen years, and had not resided therein three years next preceding his arrival at the age of twenty-one years, and by then and there intentionally and knowingly failing and refusing to make known to said last-named court the facts that at the time he arrived in the United States he was over the age of eighteen years, and had not resided therein three years next preceding his arrival at the age of twenty-one years, and by then and there falsely pretending in, to, and before said last-named court that at the time he arrived in the United States he was under the age of eighteen years, and had resided therein three years next preceding his arrival at

the age of twenty-one years, and was then and there entitled to be admitted to become a citizen of the United States.

Your orators further represent that the United States had no notice of the said application of said defendant nor of the hearing thereof, and were not represented thereat, and had no opportunity to contest the false and fraudulent claim of the defendant, but that the proceeding was entirely *ex parte* and not contested, by reason whereof the real facts in the matter were not presented to nor were they before the said last-named court on said hearing, and said court was imposed upon and induced by said false testimony offered by defendant, and mistake as to the real facts, and the aforesaid false and fraudulent pretenses and claims made by him and on his behalf, and suppression of the facts as aforesaid and by mistake of the facts, to then and there enter the decree aforesaid admitting said defendant to be a citizen of the United States under said application, the said defendant not being then and there entitled to be admitted to become such citizen either under such application or otherwise.

And your orators also charge that at the time when he obtained said decree the defendant had not, as he well knew, at least two years prior to his pretended admission, made the declaration required by the first subdivision of section 2165 of the Revised Statutes of the United States, nor did he come within any of the exceptions or other provisions of the statutes of the United States entitling him to said decree. To the contrary, your orators charge that said defendant procured said decree, contriving and conniving to work a fraud upon the United States and upon the court by which the decree was granted, and that defendant accepted it, and still claims the benefits thereof, well knowing that he was not then and is not now entitled to it, or to the benefits thereof, and that the court had been imposed upon, and had been induced to issue it through mistake of the true facts as aforesaid, and through the fraud and imposition practiced upon it as aforesaid.

And your orators further charge that the said pretended

decree of naturalization was procured, as defendant well knew at the time he procured and accepted the same, without any compliance with the laws of the United States, and in fraud thereof, and your orators aver and charge that the existence of the fraudulent decree on its face entitled the defendant to exercise the rights of a citizen of the United States, and to claim their protection, whereto he is not entitled, and if the same remains uncanceled and in force, it can be used in fraud of the United States, and of persons relying thereon as a valid decree.

Your orators therefore pray that the said defendant may be compelled to answer all and singular the premises in this bill (but not under oath, answer under oath hereby expressly waived). And your orators pray that the decree of naturalization aforesaid be declared null and void; that the said defendant be required to surrender up the certified copy thereof delivered to him; that he be forever restrained and enjoined from setting up or claiming any rights, privileges, benefits or advantages whatsoever under said decree; and that your orators shall have, generally, such other and further relief as the circumstances and nature of the case may require.

Therefore, that your honors will grant unto your orators the writ of subpœna issuing out of and under the seal of this court, to be directed to said C. D., commanding him by a certain day to appear before your honors, in the court aforesaid, and then and there answer the premises and abide the order and decree of the court.

W. H.,

Attorney-General.

J. H.,

U. S. Atty. — Dist. of —.

R. X.,

of Counsel for Plaintiff.

taxes and penalties should have priority of their said mortgage.

Wherefore plaintiffs pray that due process issue, requiring said C. D. and A. D., his wife, G. B., E. P., and S. G. to appear and answer this bill of complaint; that the said distillery and lot of land above described may be sold to satisfy said lien, and that plaintiff may have such other and further relief as may be just and equitable. J. H.,

United States Attorney, Solicitor for Plaintiffs.

(1) The district court also has jurisdiction. See R. S., Secs. 563 and 3207.

No. 103.

Of Interpleader (1). (Old English Form.) Bill by a Lessee Against Different Persons, Claiming the Rents by Different Titles, to have them Interplead.

[*Caption and address.*]

Humbly complaining, sheweth unto your lordship your orator A. B., of, etc., that the mayor, citizens, and commonalty of the city of C., being seized as of fee, of and in the perpetual curacy of D., by indenture, etc. [*State the demise from the corporation to the Reverend E. D., etc., clerk, a defendant hereinafter named, for life; and state the demise of the tithes from the said E. D. to the complainant; and also state a subsequent grant of an annuity out of the profits of the said perpetual curacy by the said E. D. to F. G., another defendant hereinafter named.*] And your orator further sheweth unto your lordship that the said E. D., at the time of making the said last-mentioned indenture or grant of annuity to the said F. G., and on or about the — day of —, in the year —, was actually a prisoner in his majesty's King's Bench prison for debt, at the suit of one L. M., and others his creditors; and that on the — day of —, in the year —, at a session then held at Horsemonger Lane, in the parish of St. Mary's, Newington, in and for the county of Surrey, the said E. D. applied to

be discharged and exonerated under and by virtue of a certain act of Parliament made and passed in the fifty-first year of the reign of his late majesty, entitled "An act for the relief of certain insolvent 'debtors'"; and the justices of the peace present at such sessions adjudged the said E. D. to be set at liberty, and he was discharged accordingly; and by virtue of the said act of Parliament, all the real and personal estate of the said E. D. was immediately after such adjudication thereby, and now is, vested in N. O., of, etc., Esq., the clerk of the peace of the said county of Surrey (another defendant hereinafter named), upon the trust, and for the purposes in the said act mentioned; but the said N. O. has not hitherto made any conveyance or assignment thereof. And your orator further sheweth unto your lordship that your orator, in pursuance of the said indenture of demise so made by the said E. D., as aforesaid, duly paid the said rent of £——, thereby reserved for the said tithes, up to the —— day of —— last; and your orator has always been ready and desirous to pay the rent for the said tithes, which has become due since that period, to the person or persons duly entitled to receive the same; and your orator hoped he should have been able so to have paid the said rent, and that no dispute could have arisen concerning the same, or at least that no suit would have been commenced against your orator in respect to the said rent; and that the said E. D., F. G., and N. O. would have settled between themselves their differences respecting the right to receive the said rent. But now so it is, may it please your lordship, the said E. D., F. G., and N. O. respectively claim to be entitled to the said rent; and the said E. D. has lately commenced an action in his majesty's court of common pleas at Westminster, for the recovery of the sum of £——, on account of the said rent, due from your orator since —— aforesaid. And the said E. D. pretends that he is discharged from the said annuity so granted by him as aforesaid, in consequence of his having taken the benefit of the said insolvent act, and that the interest of him, the said E. D., does not

vest in the said N. O. as such clerk of the peace as aforesaid, by the operation of that act; and the said F. G. insists that he ought to be paid his said annuity out of the said rent now due from your orator, and that the said E. D. is not discharged from such annuity under or by virtue of such insolvent act, but that the said annual rent, payable by your orator, still remains liable to the payment of such annuity, and he threatens and intends to proceed at law against your orator, unless the said annuity be paid by him out of such rent. And the said N. O. pretends and insists that all the said estate, right and interest in the said tithes vested in him, the said N. O., as such clerk of the peace as aforesaid, by the operation of the said insolvent act, and that he is therefore entitled to receive the said rent of £——, payable by your orator, which he insists is no longer liable to the payment of the said annuity. And your orator, under the circumstances aforesaid, is in danger of being greatly harrassed on account of the said rent, and can not safely pay the same without the aid of this honorable court. And that the said E. D., and F. G., and N. O., respectively, may set forth to whom the said rent is due and payable, and may be decreed to interplead and adjust the said several claims and demands between themselves, your orator hereby offering to account for and pay the arrears of the said rent now due from him to such of them, the said E. D., F. G., and N. O., as the same shall appear of right to belong and be payable, on being indemnified by this honorable court in so doing, or to pay the same into the hands of the accountant-general of this honorable court, to be disposed of as this honorable court shall direct. And that the said E. D. may be restrained by the order and injunction of this honorable court from further prosecution of the said action so commenced by him against your orator as aforesaid, and that he, and the said F. G. and N. O., respectively, may in like manner be restrained from all other proceedings at law whatsoever, touching the matters in question in this suit, or any of them. [*And for general relief.*] May it please, etc.

[*End with praying an injunction in the terms of the prayer, and also a subpoena against the said E. D., F. G., and N. O.*]

(1) Where two or more persons whose titles are connected by reason of one being derived from the other, or of both being derived from a common source, claim the same thing, debt, or duty by different or separate interests from a third person, and he, not knowing to which one of the claimants he ought of right to render the debt or duty, or to deliver the thing, fears that he may be hurt by some of them, he may maintain a suit and obtain against them the remedy of interpleader. In his bill of complaint he must state his own rights and their several claims, and pray that they may interplead, so that the court may adjudge to whom the debt, thing, or duty belongs, and he may be indemnified. If any suits at law have been brought against him he may pray that such proceedings be restrained until the right be determined. Mitford's Eq. Pl., pp. 58, 59. If the party has in any way made himself liable, even for the same demand, to two claimants, he can not have a bill of interpleader; for it is absolutely necessary to enable him to file the bill that he should be liable to one of the two claimants. *Crawford vs. Fisher*, 1 Hare, 436-441; *East & West India Dock Co. vs. Littledale*, 7 Hare, 57-60; *Greene vs. Mumford*, 4 R. I., 313; *Pfister vs. Wade*, 56 Cal., 43.

For particulars with reference to Bills of Interpleader in Federal Practice, see Beach's Modern Eq. Prac., Sec. 141 *et seq.*; Foster's Eq. Prac., Secs. 88 and 89.

No. 104.

Prayer of a Bill of Interpleader.

And that the said several defendants may be decreed to interplead touching their said several claims, and that plaintiff may be at liberty to pay the several sums now justly and fairly due from him for the rent of the said messuage or tenement and premises into the bank, in the name and with the privity of the accountant-general of this honorable court, in trust for the benefit of the persons or person entitled thereto, subject to the further order of this court, after deducting thereout in the first place the aforesaid sum of £36, to be allowed unto plaintiff, for repairs pursuant to the said agreement, together with all sums of money expended

and advanced by plaintiff for land tax and other necessary outgoings in respect of the said premises. And that plaintiff may be at liberty to quit the possession of the said premises, and that possession thereof may be delivered up to such person or persons as this honorable court shall direct or appoint. And that plaintiff may have a satisfaction or allowance made unto him out of the rent of the said premises for the several articles hereinbefore and in the said first agreement particularly mentioned, which have been provided by plaintiff at his own expense for the said premises. And that in the meantime the said defendants, S. O. and T. C., may be restrained by the order or injunction of this honorable court from all further proceedings in the aforesaid action of ejectment brought against plaintiff, and that they and all the said other defendants may be in like manner restrained from making any distresses or distress upon the said messuage or tenement and premises, and from commencing or prosecuting any action or actions at law against plaintiff to recover the rent of the said premises, or to turn plaintiff out of possession thereof, or otherwise from proceeding at law against plaintiff touching any one of the matters aforesaid. And that all proper and necessary directions may be given for the purposes aforesaid. [*And for further relief.*]

No. 105.

Form of Affidavit to be Annexed to a Bill of Interpleader.

The said J. C. maketh oath and saith that he has exhibited his bill of interpleader against the defendants in this cause without any fraud or collusion between him and the said defendants, or any or either of them; and that he, the said J. C., hath not exhibited his said bill at the request of the said defendants, or of any or of either of them, and that he is not indemnified by the said defendants, or by any or

either of them, and saith that he has exhibited his said bill with no other intent but to avoid being sued or molested by the said defendants, who are proceeding or threaten to proceed at law against him for the recovery of the rent of the said tithes in the said bill mentioned.

Sworn, etc.,

J. C.

No. 106.

Another Form of Affidavit.

A. B., the above-named plaintiff, maketh oath and saith that he doth not in any respect collude with either of the above-named defendants touching the matters in question in this cause, nor is he in any manner indemnified by the said defendants, or either of them, nor hath he exhibited his said bill of interpleader at the request of them, or either of them, but merely of his own free will, and to avoid being sued or molested touching the matters contained in his said bill.

Sworn, etc.,

A. B.

No. 107.

Still Another Form.

I, A. B., the above-named plaintiff, make oath and say that the bill in this suit [*or*, the bill hereunto annexed] is not filed by me in collusion with *any* or either of the defendants in the said bill named, but such bill is filed by me of my own accord for relief in this honorable court.

Sworn, etc.,

A. B.

No. 108.

Against an Agent for Mismanagement.

[*Caption, address, and introduction*].

That in the month of — he was the owner of a certain ship or vessel called the —, then lying in the port of —,

bound on a voyage to —, in the state of —, and that being desirous to procure a cargo of goods and merchandise to be carried to said —, in said vessel on freight, he applied to said C. & D., who were engaged in that line of business, to obtain a cargo for said vessel on freight, and, as a compensation for their services in so doing, agreed to pay them a commission of five per centum on the amount of the freight and primage of such goods and merchandise as they should procure to be shipped on board of the said ship, in consideration of which they agreed to act as his agents in the premises, and to make use of their knowledge, skill and ability to procure a full cargo for said vessel on freight, and that accordingly the lading and procurement of freight were intrusted to them, and in said month of —, and the ensuing months of — and —, they did procure a cargo for said vessel, and in the month of — she set sail and departed on her voyage for said —.

That on or about the — day of said —, said C. & D. sent to your orator a freight list, or statement of the amount of merchandise laden on board of the said vessel, and of the rates of freight thereof, and of the sums of money to be earned and paid on the carriage and delivery thereof at said port of — (which said freight list your orator prays leave to file in court as a part of this bill), by which it appears that all the merchandise laden on board of the said ship was shipped at specific rates of freight therein set down, and that the total amount of freight, including primage, was the sum of — dollars, upon which sum the said C. & D. claimed of your orator, and he paid to them, a commission of five per centum, amounting to the sum of — dollars, together with other charges for advertising, and so forth, as by their bill herewith also filed, in the full belief, and relying on the assurance of the said C. & D., made by sending him the said freight list and otherwise, that the merchandise therein mentioned had been actually laden on board of the said vessel, to be carried and delivered at and for the rates of freight therein specified.

That the said ship was consigned to certain persons doing business at said —, under the firm of S. & M., who, upon the arrival of said vessel in the month of —, attended to the unlading and discharge of the cargo, the collection of the freight and the remittance thereof to your orator. That upon such discharge and delivery it appeared that fifty-seven $\frac{1279}{2240}$ tons of pig-iron, which in the said freight list were specified as shipped at the rate of — dollars per ton, and the freight of which was therein stated to amount to — dollars, and one hundred and thirty-three nests tubs, two hundred nests tubs, and seventy-five dozen pails, which in said freight list were specified as shipped at and for the freight or compensation of — dollars, were not shipped at such rates of freight, but the rate of freight specified therefor in the bills of lading thereof (which were not signed by the master of said ship, but by the said C. & D., who assumed to act as his agent in that behalf without his knowledge or consent) was "*one-half net profits over costs and charges*"; that the said iron, tubs and pails, as your orator is informed and alleges, could not be sold at any profit, and that the said S. & M. did not collect, and your orator has not received, any freight or compensation for the carriage and delivery thereof at said —.

That upon receiving information from the said S. & M. of the fact that said iron, tubs and pails were shipped on half profits instead of the rates of freight stated in said freight list, your orator immediately advised the said C. & D. that he held them responsible for the amount of freight at which they had represented that the same were shipped, and upon which they had charged and been paid their full commission, and requested payment thereof, which they refused to make.

That the commission, agency and trust, for which your orator retained said C. & D., was to procure a cargo for said vessel to be carried and delivered on payment of freight in money at specified rates, and not upon half profits; that the said C. & D. represented to your orator that they had ob-

tained and shipped a cargo, upon the delivery of which your orator would be entitled to receive the sums of money as freight thereof specified in the said freight list; that said C. & D. demanded of your orator a commission on the amount thereof, as so shipped, and that your orator paid them said commission, in the full belief and relying upon their assurance, contained in said freight list, that the various articles therein mentioned were shipped at the rates of freight therein specified, and that upon the safe delivery thereof your orator would be entitled to receive the same in money.

That the said iron, tubs and pails were safely carried to —, and delivered to the consignees thereof, and that upon such delivery your orator had earned and was entitled to be paid for such service the rates of freight and sums of money specified in the said freight list, the same being the usual and current rates of freight upon the amounts of which, as such, the said C. & D. charged their commissions as afore-said; that by reason of their undertaking to carry and deliver the same upon half profits instead of on freight your orator has lost the sums of money to which he should have been entitled, and to which the said C. & D. represented that he would be entitled, on the delivery thereof, and has not received and is not entitled to claim, by reason of their said doings, any compensation from the owners or consignees of the said goods and merchandise for the cost and expense of their transportation and delivery; and that by reason of the premises, and of the representation made that the said goods and merchandise were shipped at the rates of freight specified in the said freight list, the said C. & D. are bound to make good the loss your orator has suffered by their said doings, and to pay to him the sums of money which he would have received if the said goods and merchandise had been shipped at the rates specified in said freight list, and your orator has repeatedly requested them so to do.

But now so as it is, may it please your honors, that the said C. & D. absolutely refuse to comply with such request.

To the end, therefore, that they, the said C. & D., may be decreed to pay to your orator the said sums of — dollars, and — (1) dollars, and such losses, damages and interest as your orator has suffered by reason of the premises, and that your orator may have such other relief as the nature of his case may require, and that the said C. & D. may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several corporal oaths, and to the best of their knowledge and belief, make answer to all and singular the premises.

May it please your honors to grant unto your orator a writ of subpœna, directed to the said A. C. and A. D., commanding them at a suitable time and place to appear before your honors to make answer to the premises, and to abide by and perform such order and decree as to your honors shall seem meet.

A. B.

X. & X., Solicitors for Plaintiff.

[*Verification. See No. 85.*]

(1) See No. 86, note 2.

BILLS NOT ORIGINAL.

No. 109.

Petition for Leave to File Supplemental Bill.

[*Caption, as in an original bill.*]

The petition of A. B., the above plaintiff, respectfully shows that on or about the — day of —, your petitioner filed his bill in this honorable court against C. D., for the purpose of [*state general object of original bill*], and praying [*state the prayer verbatim*].

And your petitioner further shows that the said, C. D., being served with process of subpœna, appeared to the said bill, but has not yet put in his answer thereto. That after the appearance of the said defendant was entered, that is to say, on or about the — day of —, and before any further proceedings were had in the said cause [*state the supplemental matter*]; wherefore your petitioner is advised that it is necessary to bring the said C. H. before this court as a party defendant to this suit.

Your petitioner therefore prays that leave may be granted to him to file a supplemental bill against the said C. H., for the purpose of making him a party defendant to this suit with proper and apt words to charge him as such, and with such prayer for relief as may be proper, and for such other, etc.

No. 110.

Supplemental Bill (1).

[*Caption, address, and introduction, as in an original bill.*]

That on or about, etc., your orator exhibited his original bill of complaint in this honorable court, against C. D., the

defendant hereinafter named, as defendant thereto, thereby stating a certain memorandum of agreement, dated the — day of —, —, and made between E. W., therein described, of the one part, and your orator of the other part, and signed by the said E. W., whereby the said E. W. agreed to sell to your orator a certain lot or piece of land called, etc., therein particularly described, and of which the said E. W. was seized in fee, for the sum of — dollars; and further stating the delivery by the said E. W. of the abstract of his title, and the acceptance of such title by your orator; and further stating the death of the said E. W., intestate, and that he left the said J. W., his only son and heir at law; and that letters of administration of the estate and effects of the said E. W. had been granted by the surrogate of the county of — to the said J. W.; and further stating applications on the part of your orator to the said J. W. to perform the said agreement so entered into by his father as aforesaid, and his refusal to do so; and charging that the said lot or piece of land, called, etc., formed part of a considerable estate called Hesseltine, the whole of which had, before the date of the said contract for sale, been mortgaged by the said E. W. to one J. S. for — dollars, which mortgage debt was still due and owing; and charging that the said E. W. would, if living, be bound to redeem the said mortgage, in order to convey the said lot or piece of land to your orator free from incumbrances, and that the said J. W. was bound to do so to the extent of his father's assets, which your orator charged were amply sufficient for the same; and praying that the said J. W. might be decreed specifically to perform the said agreement so entered into by the said E. W. as aforesaid, and to convey and procure all proper parties to join in conveying the said lot or piece of land comprised in the said agreement to your orator, or as he should direct, upon your orator paying to the said J. W. the sum of — dollars, which your orator thereby offered to do, and in all respects to perform the said agreement on your orator's part; and in case the said J. W. should

not admit assets of his said father sufficient to enable him to perform the said agreement, then that the usual accounts of the real and personal estate of the said E. W. might be taken; and that your orator might have such other or further relief in the premises as the circumstances of his case might require, and to your honor should seem meet.

And your orator further shows unto your honor that the said J. W., being duly served with process of subpoena, appeared to your orator's said bill and put in his answer thereto, whereby he alleged, among other things, that he could not perform the said agreement of the — day of —, without first redeeming the said mortgage so made to the said J. S. as aforesaid, and that the assets of the said J. W. were not sufficient to enable him to do so.

And your orator further shows that the said answer has been replied to by your orator, and witnesses have been examined on both sides, but the proofs have not yet been closed; as by the said bill and proceedings, now remaining as of record in this honorable court, reference being had thereto, will appear.

And your orator further shows, by way of supplement, that your orator has lately, and since the examination of witnesses in the said cause, discovered, as the fact is, that the said J. S. now is and always since the date of the said agreement has been ready and willing to concur in conveying the said lot or piece of land to your orator discharged from his said mortgage, upon receiving your orator's purchase-money in discharge, *pro tanto*, of the said mortgage debt.

And your orator charges that such information was first given to your orator by means of a letter addressed by the said J. S. to Mr. X., your orator's solicitor, and dated, etc., part of which was in the words and figures following, that is to say: "Mr. W.'s refusal to carry into effect his agreement with Mr. B. is unaccountable to me, because he knows that I have always been willing and even desirous to confirm the sale, and to release the premises from my mortgage on re-

ceiving the —— dollars towards my debt. This, in fact, was understood between his father and myself at the time when the sale to Mr. B. was made"; as by such letter, reference being had thereto, will more fully appear.

And your orator charges, therefore, that it is unimportant whether the said J. W. has assets of his father sufficient to redeem the mortgage debt so due to the said J. S. as aforesaid, inasmuch as the said J. S. is willing to be partially redeemed, and the purchase-money of your orator is sufficient for that purpose.

And your orator charges that the said J. W. ought to be decreed to join with the said J. S. (whose concurrence your orator undertakes to procure) in conveying the said lot or piece of land to your orator, upon payment by your orator of the said sum of —— dollars to the said J. S., in part discharge of his said mortgage debt.

To the end, therefore, that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may, upon his corporal oath, according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid, as fully and explicitly as if the same were here repeated and he particularly interrogated thereto; and more especially that he may answer and set forth, in manner aforesaid, whether your orator did not, on or about, etc., or at some other and what time, exhibit his original bill of complaint in this honorable court against such person, and of or to such purport or effect as hereinbefore in that behalf stated, or against some other and what person, and of or to some other and what purport or effect, or how otherwise? And whether thereupon such proceedings were not had in the said cause as are hereinbefore in that behalf stated, or how otherwise? And whether your orator has not, since the examination of witnesses in the said cause, or at some other and what period, discovered, and whether it is not the fact that the said J. S. now is, and whether or not he

always, since the date of the said agreement, has been ready and willing to concur in conveying the said lot or piece of land to your orator, discharged from his said mortgage, upon receiving your orator's purchase money in discharge, *pro tanto*, of the said mortgage debt, or how otherwise? And whether such information was not first given to your orator by means of such letter as hereinbefore in that behalf stated, or some other and what letter, or by some other and what means, or how otherwise, and when was such information first given to your orator? Whether such letter as is hereinbefore mentioned to bear date, etc., was not addressed by such person to such person, and whether it was not of such date, and partly in such words and figures, or of or to such purport or effect, as hereinbefore in that behalf stated, or addressed by some other and what person or persons, to some other and what person or persons, of some other and what date, and (with respect to the part thereof hereinbefore in that behalf mentioned) in some other and what words and figures, or of or to some other and what purport or effect, or how otherwise? Whether it is not, and whether not for the reasons hereinbefore in that behalf given, unimportant, for the purposes of these suits, whether the said defendant has assets of his father sufficient to redeem the said mortgage debt, or how otherwise? And whether the said defendant ought not to be decreed to join with the said J. S. in such conveyance as hereinbefore in that behalf stated, or in some other conveyance of the same nature, upon such payment by your orator as hereinbefore in that behalf mentioned, or some other and what payment, or how otherwise; and if not, why not.

And that your orator may have the same relief against the said J. W. as he might have had if the facts hereinbefore stated and charged by way of supplement had been stated in your orator's said original bill. And in case the said defendant shall continue to allege that he has not assets of the said E. W. sufficient for the redemption of the mortgage

debt so due to the said J. S. as aforesaid, then that he may be decreed to join with the said J. S. in conveying the said lot or piece of land comprised in the said agreement of the — day of —, unto your orator and his heirs, or as he shall direct, upon your orator paying to the said J. S. the said purchase-money or sum of — dollars towards the discharge of the said mortgage debt; your orator hereby offering to pay such sum, and in all respects to perform the said agreement of the — day of —, on his part, and also undertaking to procure the concurrence of the said J. S. in such conveyance as aforesaid; and that your orator may have such further or other relief in the premises as the circumstances of his case may require, and to your honor shall seem meet. May it please, etc. [*process of subpœna*].

(1) New averments are properly alleged in a supplemental bill, and in it any party may be brought before the court who has been omitted to be introduced at the stage of the cause at which an amendment for that purpose may be made. *Dow vs. Jewell*, 45 Am. Dec., 371. Thus, where a complainant had no ground for proceeding originally, but subsequently becomes entitled to relief, he should file a new bill. *Caudler vs. Pettit*, 19 Am. Dec., 399. And the assignee of complainant must make himself a party by supplemental bill; he can not proceed in the name of the original party. *Mills vs. Hoag*, 31 Am. Dec., 271. But where a complainant has assigned his interest in the subject-matter of the litigation pending the suit, his assignee can not on a supplemental bill be substituted to his rights; he must file an original bill in the nature of a supplemental bill. *Tappan vs. Smith*, 5 Biss., 73.

New oral testimony, tending merely to corroborate evidence on the one side, or to contradict evidence on the other, on the points in issue, is not a sufficient foundation for a supplemental bill. No new evidence is a sufficient foundation for a supplemental bill, unless it be of such a nature that it would, if unanswered, require a reversal of the decree. *Jenkins vs. Eldridge*, 3 Story, 299.

A bill stating previous proceedings of the court, not with a view to their alteration or amendment, but as a portion of the facts out of which the complainant's equity arises, is an original bill, though it is alleged to be a supplemental bill. *Brooks vs. Brook*, 38 Am. Dec., 310.

After a case has been argued and has been under advisement, it is proper for the circuit court to deny the motion for leave to file a fur-

ther bill, making an essential change in the character and objects of the cause, by way of supplement and amendment. *Snead vs. McCoull*, 12 How., 407.

See also Beach's Modern Eq. Prac., Secs. 490 and 505; and as to jurisdiction of federal courts in respect to citizenship and amount in controversy see Act of March 3, 1887, 25 Stat. at L., 433; Desty's Fed. Proc., Sec. 84.

111.

Supplemental Bill Against the Assignee of a Bankrupt Defendant.

[Caption, address, and introduction, as in an original bill.]

That your orator, A. B., did in or as of — term, —, exhibit his original bill of complaint in this honorable court against C. D., of —, praying that an account might be taken of the personal estate, effects, etc. And your orator further shows that the said defendant, having been served with process to appear, appeared accordingly and put in his answer to the said bill, and your orator replied to the [said answer, but before any further proceedings were had in the said cause, and on or about the — day of —, the said C. D. has been duly found and declared bankrupt, and E. D., of —, the defendant hereinafter named, having been since duly chosen assignee of the estate and effects of the said bankrupt, there have been duly conveyed and assigned all the estate and effects late of the said bankrupt to the said E. D., and therefore your orator is advised that he is entitled to the same relief against the said E. D. as he would have been entitled to against the said C. D. if he had not become bankrupt. To the end therefore, etc.

And that your orator may have the full benefit of the said suit and proceedings therein against the said E. D., and may have the same relief against him as your orator might or could have had against the said C. D. in case he had not become bankrupt; or that your orator may have such further or other relief in the premises as to your honors shall seem meet. May it please, etc.

No. 112.

**Supplemental Bill to an Original and Amended Bill Filed
by a Lessee for the Specific Performance of an Agree-
ment to Grant a Further Lease.**

[Caption, address, and introduction, as in an original bill.]

That in or as of — term, —, your orator, A. B., exhibited his original bill of complaint in this honorable court against H. B., and which said bill has been amended by order of this honorable court, thereby praying that the said defendant might be decreed specifically to perform his agreement with your orator, touching the lease of the farm and premises in the said bill mentioned, and to grant your orator a lease thereof for — years, commencing from the expiration of his former lease, at the yearly rent of — dollars, your orator being willing and ready to do and perform everything on his part required to be done and performed in pursuance of the said agreement.

And your orator further shows that the said defendant appeared and put in his answer to the said original bill. As by the said bill and answer now remaining as of record in the honorable court, reference being thereunto had, will appear.

And your orator further shows, by way of supplement, that since the filing of the said original bill the said defendant has caused an action of ejectment to be commenced in the court of —, for the purpose of turning your orator out of possession of the said farm and premises, and the said action is still depending in the said court. And your orator being advised that the said defendant can not support such action, and that your orator is entitled to a specific performance of the said agreement as prayed by his said amended bill, he has, by himself and his agents, several times applied to, and requested the said defendant to desist from proceeding in the said action, and he was in hopes that he would have complied with such fair and reasonable requests, as in justice

and equity he ought to have done. But now so it is, may it please your honors, that the said H. B. refuses to comply with your orator's said requests, and insists upon proceeding in his said action, and to turn your orator out of possession of the said farm and lands, to the manifest wrong and injury of your orator in the premises. To the end, therefore, that, etc. [*See No. 74, and interrogate to the statements.*]

And that the said defendant may be restrained by the injunction of this honorable court from proceeding in the said action, and from commencing any other action or proceeding at law for the purpose of turning your orator out of possession of the said farm and lands. [*And for further relief.*] May it please, etc.

[*Pray subpoena and injunction against H. B. See notes to No. 110.*]

No. 113.

Supplemental Bill in a Patent Case.

For form, see under title "Patents."

No. 114.

To Perpetuate Testimony.

[*Caption, address, and introduction.*]

The plaintiff, A. B., of, etc., shows unto your honors that C. D., late of, etc., deceased, before and at the time of making his will hereinafter mentioned, was seized in fee of and in divers freehold estates, which are hereinafter more fully mentioned and described; and the said C. D., being so seized as aforesaid, and being of sound and disposing mind, memory and understanding, duly made and published his last will and testament in writing, bearing date the — day of —, signed by him, the said C. D., and subscribed and attested according to law; and which said will, with the attestation

thereof, is in the words and figures following: that is to say, [*set out the will and the attestation verbatim*], as by the said will and the attestation clause thereof, reference being thereto had, will appear.

And the plaintiff further shows unto your honors that the said C. D. departed this life on or about the — day of —, without having revoked or altered his said will, leaving his brother E. D., of, etc., the defendant hereinafter named, his heir at law; and upon the death of the said testator, the plaintiff, under and by virtue of the said will, entered upon and took possession of all the said freehold estates thereby devised to the plaintiff for life, and the plaintiff is now in possession thereof. And the plaintiff hoped that no disputes would have arisen respecting the devises contained in the said will or the validity thereof. But now so it is, etc., the said E. D. pretends that the said will is void and ineffectual; and although he will not dispute the validity thereof during the lives of the subscribing witnesses thereto, yet he threatens and intends to do so when they are dead, so that the plaintiff may be deprived of their testimony.

And the plaintiff further sheweth that all of the said subscribing witnesses are upwards of seventy years of age and in feeble health [*or, are about to depart from the United States*], and that the plaintiff fears the testimony of the said witnesses may be lost by their death [*or, departure from the United States*] before the cause can be investigated in a court of law.

In consideration whereof, etc.; and that the plaintiff may be at liberty to have the several subscribing witnesses to said will examined, and that the plaintiff, if necessary, may have a commission or commissions for the examination of the said subscribing witnesses to the said will, to the end that their testimony may be preserved and perpetuated; and that the plaintiff may be at liberty to read and make use of the same on all future occasions, as he shall be advised. May it please your honors, etc.

No. 115.

Of Revivor (1) (Before Decree) by the Administrator of the Plaintiff in the Original Suit.

[*Caption, address, and introduction, as in an original bill.*]

That J. A., late of —, but now deceased, on or about —, exhibited his original bill of complaint in this honorable court against G. T., of —, as the defendant thereto, thereby stating, etc., praying, etc. [*Here state the prayer.*] And the plaintiff further shows unto your honors that the said defendant, having been duly served with process for that purpose, appeared and put in his answer to said bill, as in and by the said original bill, etc. And the plaintiff further shows that some proceedings have been had before C. G., one of the masters of this court, to whom this cause stands referred, but no general report has yet been made in the said cause; and that the said J. A. lately and on or about the — day of —, departed this life, having first made and published his last will and testament in writing, bearing date the — day of —, and a codicil thereto bearing date the — day of —, and thereby appointed M. C. and W. W. executors thereof.

And the plaintiff further shows that the said M. C. and W. W. have renounced probate of the said will and codicil of the said J. A., deceased, and decline to act in the trusts thereof, and that the plaintiff has obtained letters of administration with the will annexed of the goods, chattels, rights, and credits of the said J. A., deceased, to be granted to him by and out of the proper court, and has thereby become and now is his legal personal representative.

And the plaintiff further shows that the said suit and proceedings have become abated by the death of the said J. A., and the plaintiff is, as he is advised, entitled to have the said suit and proceedings revived against the said defendant G. T., and the said accounts by the aforesaid order of reference directed, prosecuted, and carried on, and to have the said

cause put in the same plight and condition as the same was in previously to the abatement thereof by the death of said J. A.

To the end, therefore, that the said defendant may answer the premises; and that the said suit and proceedings which so became abated as aforesaid may stand revived, and be in the same state and condition as the same were in at the time of the death of the said J. A., or that the defendant may show good cause to the contrary. May it please your honors to grant unto the plaintiff a writ of *subpœna* to revive [and answer], issuing out of and under the seal of this honorable court to be directed to the said G. T., thereby commanding him at a certain day and under a certain penalty, to be therein limited, personally to be and appear before your honors, in this honorable court, then and there [to answer the premises and] to show cause, if he can, why the said suit, and the proceedings therein had, should not stand and be revived against him, and be in the same plight and condition as the same were in at the time of the abatement thereof; and further, to stand to, and to abide, such order and decree in the premises as to your honors shall seem meet. And the plaintiff shall ever pray, etc.

[*Where it is only necessary to pray a subpœna to revive, the words within brackets should be omitted.*]

(1) For requisites for a bill of revivor, consult Beach's Modern Eq. Prac., Sec. 486; Foster's Fed. Prac., Sec. 180. Upon a bill of revivor the sole questions before the court are, the competency of the parties, and the correctness of the bill to revive. General objections to the original bill, grounded on its not showing a proper case for the interference of a court of equity, should be reserved until after the revivor of the bill. *Bettes vs. Dana*, 2 Sumn., 383. Compare *Oliver vs. Dacatur*, 4 Cranch C. C., 592; *Kennedy vs. Bank of Georgia*, 8 How., 586.

No. 116.

Of Revivor and Supplement Where Both Parties in
Original Bill are Deceased (1).

[*Caption, address, and introduction, as in an original bill.*]

That A. B. and S. B. are the executors named and appointed in and by the last will and testament of H. W., late of, etc., deceased, that on or about the — day of July, —, the said H. W. exhibited his bill of complaint in this honorable court against T. W., late of, etc., deceased, thereby praying that the said T. W. might be decreed by this honorable court to come to a just and fair account with the said H. W. for the principal and interest then due and owing to him on the mortgage security in the said bill mentioned, and might pay the same to the said H. W. by a short day to be appointed by this honorable court, together with his costs; and in default thereof, that the said T. W. might stand absolutely barred and foreclosed of and from all manner of benefit and advantage of redemption or claim in or to the residue of the respective mortgaged premises in the said bill mentioned, and every part thereof. And the said defendant T. W., having been duly served with process, appeared thereto, and departed this life on or about the — day of —, without having put in his answer to the said bill.

And your orators show unto your honors by way of supplement to the said original bill, that the said defendant T. W. departed this life intestate, leaving his wife E. W., a defendant hereinafter named, *enceinte* with a child since born and named A. W., and the said A. W. is now the sole heiress at law of the said T. W., deceased, and, as such, entitled to the equity of redemption of the said mortgaged premises.

And your orators further show unto your honors that on or about the — day of —, —, letters of administration of the goods, chattels, and effects of the said T. W., deceased, were duly granted by the court of — unto his widow, the said E. W., who is thereby become his sole personal representative.

And your orators further show unto your honors that the said complainant H. W. departed this life on or about the — day of —, having previously duly made and published his last will and testament in writing, bearing date on or about the — day of —, and thereof appointed your orators joint executors; and on or about the — day of —, your orators duly proved the said will in the said court of —, and took upon themselves the burthen of the execution thereof.

And your orators further show that upon the death of the said H. W. the said mortgaged premises became, and the same are now, vested absolutely at law in your orators, as his legal personal representatives, subject nevertheless to redemption, on payment of the principal money and interest thereby secured.

And your orators further show unto your honors that the said suit having become abated by the death of the said T. W., your orators are advised that they, as the personal representatives of the said H. W., deceased, are entitled to have the same revived and restored as against the said E. W. and A. W. to the same plight and condition in which it was at the time of the death of the said T. W., and to have the same relief against the said E. W. and A. W. To the end, therefore, that the said E. W. and A. W. may, upon their respective corporal oaths, etc. [*Interrogate as to the statements.*]

And that the said E. W. and A. W. may answer the said original bill, and that they may be decreed by this honorable court to come to a just and fair account with your orators for the principal and interest now due and owing to your orators on the said mortgage securities, and may pay the same to your orators by a short day to be appointed by this honorable court, together with your orators' costs, and in default thereof, that the said defendants may stand and may be absolutely barred and foreclosed of and from all manner of benefit or advantage of redemption or claim in or to the said mortgaged premises, and every part thereof; and that the said suit may stand and

be revived against the said defendants, and be in the same plight and condition in which the same was at the time of the decease of the said defendant T. W., or that the said E. W. and A. W. respectively may show good cause to the contrary. May it please, etc.

(1) See note to No. 115.

No. 117.

Of Review to Examine and Reverse a Decree (1).

[*Caption, address, and introduction.*]

That in — term, in the year —, W. S., of, etc. (the defendant hereinafter named), exhibited his bill of complaint in this honorable court against your orator, and thereby set forth that, etc. [*here insert the original bill*]. And your orator being served with a *subpœna* for that purpose, appeared and put in his answer to the said bill, to the effect following: [*Here recite the substance of the answer*]. And the said W. S. replied to the said answer, and issue having been joined, and witnesses examined, and publication duly passed, the said cause was set down to be heard, and was heard before your honors, the — day of — last, when a decree was pronounced, which was afterwards passed and entered, in which it was set forth and recited, that it was at the hearing, on your orator's behalf, insisted that your orator had, by his answer, set forth that, etc. [*here insert the recital and decree*]. And the said decree has since, and on or about —, been duly signed and enrolled, and which said decree your orator humbly insists is erroneous, and ought to be reviewed, reversed, and set aside for many apparent errors and imperfections, inasmuch as it appears by your orator's answer, set forth in the body of the said decree. [*here insert the apparent errors*]. And no proof being made thereof, no decree ought to have been made or grounded thereon; but the said bill ought to have been dismissed for the reasons aforesaid.

In consideration whereof, and inasmuch as such errors and imperfections appear in the body of the said decree, and there is no proof on which to ground any decree to set aside the said rent-charge, your orator hopes that the said decree will be reversed and set aside, and no further proceedings had thereon. To the end, therefore, that the said W. S., etc. [See No. 74.] And that for the reasons, and under the circumstances aforesaid, the said decree may be reviewed, reversed, and set aside, and no further proceedings taken thereon, and your orator permitted to remain in the undisturbed possession and enjoyment of the said rent-charge.

[*Prayer for subpœna in usual form.*]

(1) To authorize a bill of review, under either the English or American practice, error must appear on the face of the decree or pleadings, and the evidence at large can not be gone into. *Seguin vs. Maverick*, 76 Am. Dec., 117. And leave of the court must be obtained before filing the bill. *Simpson vs. Watts*, 62 Am. Dec., 392. Consult Beach's *Modern Eq. Prac.*, Sec. 852 *et seq.*

No. 118.

Petition for Leave to File a Bill of Review for New Matter.

[*Caption.*]

The petition of A. B., the above plaintiff, respectfully shows that on or about the — day of —, your petitioner filed his bill in this honorable court against C. D. for the purpose of [*state general object of original bill*], and praying [*state the prayer verbatim*].

And your petitioner further shows that the said C. D., being served with process of subpœna, appeared to the said bill and put in his answer thereto, to which a replication was filed. And the said cause was thereupon examined on both sides, and the proofs closed. And that the said cause was brought to a hearing before your honor on —, whereupon a decree was made to the following effect [*set forth substance of decree*].

And your petitioner further shows that such decree has since been duly enrolled.

And your petitioner further shows that since the time of pronouncing the said decree your petitioner hath discovered new matter of consequence in the said cause; particularly that E. F., deceased, the uncle of the said C. D., of whom the said C. D. claims to be sole heir at law, left two sons and a daughter him surviving, named respectively, etc., who were his heirs at law; and that such sons and daughter are still alive and residing at, etc.; which new matter your petitioner did not know, and could not by reasonable diligence have known, so as to make use thereof in the said cause, previous to and at the time of pronouncing the said decree.

Your petitioner therefore prays that he may be at liberty to file a bill of review for the purpose of having the said decree reviewed, reversed and set aside, and that no further proceedings may be had under the same.

And your petitioner, etc.

No. 119.

Of Review for New Matter (1).

[*Caption, address, and introduction.*]

That on or about —, C. D., of, etc., the defendant herein, exhibited his bill of complaint in this honorable court against the plaintiff, and thereby set forth that, etc. [*Here insert the original bill.*] And the plaintiff being duly served with process for that purpose, appeared and put in his answer to the said bill, to the effect following: [*Here state the substance of the answer.*] And the said C. D. replied to the said answer, and issue having been joined and witnesses examined, and the proofs closed [*or, the said C. D. joined issue on the answer, and*], the said cause was set down to be heard, and was heard before your honors, on the — day of —, when a decree was pronounced, whereby your honors decreed that the plaintiff's title to the premises was valid and effectual, after which

the said C. D. petitioned your honors for a rehearing, and the said cause was accordingly reheard, and a decree of reversal made by your honors on the ground of the said C. D. being the heir at law of the said E. F., deceased, and which said decree of reversal was afterwards duly signed and enrolled, as by the said decree and other preceedings now remaining filed as of record in this honorable court, reference being thereto had, will appear.

And the plaintiff shows unto your honors, by leave of this honorable court first had and obtained for that purpose, by way of supplement, that since the signing of the said decree of reversal the plaintiff has discovered, as the fact is, that the said E. F. was, in his lifetime, seized in his demesne as of fee, of and in the hereditaments and premises in question in the said cause, and that the said E. F., while so seized, and when of sound mind, duly made and published his last will and testament in writing, bearing date on the — day of —, which was executed by him, and attested according to law, and thereby gave and devised unto the said J. W., his heirs and assigns forever, to and for his and their own absolute use and benefit, the said hereditaments and premises in question in the said cause (to which the plaintiff claims to be entitled as purchaser thereof from the said J. W.).

And the plaintiff further shows unto your honors that since the said decree of reversal was so made, signed, and enrolled, as aforesaid, and on or about —, the said C. D. departed this life intestate, leaving G. H., of, etc. the defendant herein his heir at law, who, as such, claims to be entitled to the said hereditaments and premises, in exclusion of the plaintiff. And the plaintiff is advised*and insists that, under the aforesaid circumstances, the said last-mentioned decree, in consequence of the discovery of such new matter as aforesaid, ought to be reviewed and reversed; and that the first decree declaring the plaintiff entitled to the said hereditaments and premises should stand, and be established and confirmed; and for effectuating the same, the said several proceedings, which

became abated by the death of the said C. D., should stand and be revived against the said G. H., as his heir at law.

To the end, therefore, etc. [*See No. 74.*] And that the said suit may be revived against the said G. H., or that he may show good cause to the contrary, and that the said last decree, and all proceedings thereon, may be reviewed and reversed, and that the said first-mentioned decree may stand and be established and confirmed, and be added to, by the said will being declared a good and effectual devise of such hereditaments and premises as aforesaid; and that the said G. H. may be decreed to put the plaintiff into possession of the said hereditaments and premises, and in the same situation, in every respect, as far as circumstances will now permit, as the plaintiff would have been in case such last decree had never been pronounced and executed; and that the plaintiff may have such other, etc. May it please, etc.

[*Pray subpœna to revive and answer against the said G. H.*]

See notes to No. 115.

No. 120.

To Suspend a Decree.

[*Caption, address, and introduction.*]

That your orator in the year — borrowed the sum of — dollars from C. D., of —, the defendant herein, and in order to secure to the said C. D. the repayment thereof, with legal interest, your orator, by an indenture bearing date the — day of —, in the year —, granted, bargained, sold, and demised unto the said C. D., his executors, administrators, and assigns, all that [*describe premises*] for the term of one thousand years, subject to redemption on payment by your orator of the said sum of — dollars and interest, as therein mentioned, as by the said indenture, reference being thereunto had, will more fully appear.

And your orator further shows unto your honors that the said C. D., on or about —, exhibited his bill of complaint

in this honorable court against your orator, for payment of what was then due to him for principal and interest on the said security, by a short day to be appointed for that purpose, or that your orator might be absolutely debarred and foreclosed from all right and equity of redemption in the said mortgaged premises; and your orator having put in his answer thereto, and submitted to pay what should appear to be due from him, the said cause came on to be heard before your honors on or about —, when it was referred to R. V., one of the masters of this honorable court, to take an account of what was so due from your orator to the said C. D., as aforesaid, and your orator was ordered to pay the same on the — day of —, or to be absolutely foreclosed of all right and equity of redemption in the said mortgaged premises; as by the said proceedings now remaining as of record in this honorable court, reference being thereunto had, will appear.

And your orator further shows unto your honors that your orator was duly prepared to pay what should be reported to be due from him; but before the said master made his report, your orator was sent in great haste, by the commands of his majesty, ambassador to the court of Paris on special and weighty affairs of state, which admitted of no delay; and your orator was therefore unable to make any provision for the payment of what should be so found due from him as aforesaid.

And your orator further shows unto your honors that the said master, during your orator's absence, made his report, whereby he found that the sum of — dollars was due to the said C. D. for principal and interest from your orator, but no further proceedings have since been taken in the said cause. And your orator being ready and willing to pay the said sum of — dollars to the said C. D., and all subsequent interest thereon, is advised, that on payment thereof, he is entitled under the circumstances aforesaid to have so much of the said decree as relates to the foreclosure of your orator's right and equity of redemption in the said mortgaged

premises suspended, and on payment thereof, to have a reconveyance of the said mortgaged premises from the said C. D. for the remainder of the term so granted to him as aforesaid. To the end, therefore, etc. [*Interrogate to the foregoing statement, and particularly the cause alleged for suspension of the decree.*] And that the subsequent interest on the said sum of — dollars, so reported to be due from your orator as aforesaid to the present time, may be computed by the direction of this honorable court, and that on payment of the said sum of — dollars, and such interest as aforesaid, the said decree of foreclosure may be suspended, and the said C. D. directed, at the expense of your orator, to reconvey the said mortgaged premises to your orator, or as he shall appoint, freed and absolutely discharged from the said mortgage. [*And for general relief.*] May it please, etc. [*End by praying subpoena against C. D.*]

No. 121.

To Set Aside a Decree obtained by Fraud (1).

[*Caption, address, and introduction.*]

That T. B., of, etc., deceased, the plaintiff's late father, during his life, and on or about the — day of —, was seized in his demesne, as of fee, of and in the real estate hereinafter particularly described; and by indenture of that date, made between the said T. B. of the one part, and C. D., of, etc., the defendant herein, of the other part, the said T. B., in consideration of — dollars, bargained, sold, and conveyed unto the said C. D., his heirs and assigns, all, etc. [*describe the mortgaged premises*], subject to redemption on payment of the said principal money and lawful interest at the time therein mentioned, and long since past; as by the said indenture, reference being thereto had, will more fully appear.

And the plaintiff further shows that the said T. B. departed this life on or about —, leaving the plaintiff his heir at law, and only child, then an infant under twenty-one years of age,

that is to say, of the age of seven years or thereabouts, him surviving.

And the plaintiff further shows that during the plaintiff's minority, on or about —, the said C. D. filed his bill of complaint in this honorable court against the plaintiff for a foreclosure of the plaintiff's right and equity of redemption in the said mortgaged premises; but the plaintiff was not represented in such bill to be then an infant; and the said C. D. caused and procured one L. M., since deceased, who acted in the management of the affairs of the plaintiff's said father, to put in an answer in the name of the plaintiff, and without ever acquainting the plaintiff, or any of his friends or relations therewith; in which said answer a much greater sum was stated to be due from the plaintiff, on the said mortgage security, to the said C. D., than in fact was really owing to him, and for which it was untruly stated that the said mortgaged premises were an insufficient security; and in consequence of such answer being put in, the said C. D. afterwards, in conjunction with the said L. M., on or about —, obtained an absolute decree of foreclosure against the plaintiff, which the plaintiff has only lately discovered, and of which the plaintiff had no notice, and in which said decree no day is given to the plaintiff, who was an infant when the same was pronounced, to show cause against it when he came of age; as by the said proceedings now remaining as of record in this honorable court, reference thereto being had, will more fully appear.

And the plaintiff further shows that the plaintiff, on the — day of — last, attained the age of twenty-one years, and shortly afterwards, having discovered that such transactions had taken place during his minority as aforesaid, by himself and his agents, represented the same to the said C. D., and requested him to deliver up possession of the said mortgaged premises to the plaintiff, on being paid the principal money and interest, if any, actually and fairly due thereon, which the plaintiff offered, and has at all times

been ready to pay, and which would have been paid by the personal representatives of the said T.B. out of his personal assets, during the plaintiff's minority, had any application been made for that purpose. And the plaintiff hoped that the said C.D. would not have insisted on the said decree of foreclosure, so fraudulently obtained as aforesaid, but would have permitted the plaintiff to redeem the said mortgaged premises, as he ought to have done. But now so it is, etc., the said C.D., etc., pretends that the said decree of foreclosure was fairly and properly obtained, and that a day was therein given to the plaintiff, when of age, to show cause against the same, and that the plaintiff has neglected to do so, and that the plaintiff is neither entitled to redeem, nor to travel into the said accounts; whereas the plaintiff charges the contrary thereof to be true, and that the plaintiff only attained the age of twenty-one years on the said — day of —, and that he has since discovered the several matters aforesaid, by searching in the proper offices of this honorable court; and the plaintiff expressly charges that, under the circumstances aforesaid, the said decree, so fraudulently obtained, as heretofore mentioned, ought to be set aside, and the plaintiff ought not to be precluded thereby, or in any other manner, from redeeming the said mortgaged premises, of which the said C. D. has possessed himself, by such means as aforesaid. All which actings, etc. In consideration whereof, etc. To the end, etc.; and that the said decree of foreclosure may, for the reasons and under the circumstances aforesaid, be set aside by this honorable court, and declared to be fraudulent and void; and that an account may be taken of what, if anything, is now due to the said C.D. for principal and interest on the said mortgage; and that an account may also be taken of the rents and profits of the said mortgaged premises, which have, or without his willful default might have been, received by or on behalf of the said C.D., and if the same shall appear to have been more than the principal and interest due on the said mortgage,

then that the residue thereof may be paid over to the plaintiff, and that the plaintiff may be at liberty to redeem the said mortgaged premises, on payment of the principal and interest, if any, remaining due on the said security; and that the said C. D. may be decreed, on being paid such principal money and interest, to deliver up possession of the said mortgaged premises, free from all encumbrances, to the plaintiff, or as he shall appoint, and to deliver up all title deeds and writings relating thereto. [*General relief.*] May it please, etc. [*Prayer for subpoena against C. D., etc.*]

(1) See Beach's Modern Eq. Prac., Sec. 884, and cases cited.

DEMURRERS.**No. 122.****Title and Commencement.**

[*Caption.*]

The demurrer of A. B., attorney [*or*, solicitor] general, or of C. D., Esq., attorney [*or*, solicitor] general of the state of —, or of the mayor and aldermen of the city of E.; or of F. G., an infant under the age of twenty-one years, by H. I., his guardian, or of M. N. and O., his wife; or of P., the wife of R. S., who has fully obtained an order of this honorable court for liberty to defend separately from her said husband, or of T., the wife of V. Y., defendants, to the bill of complaint of Z. X., complainant.

No. 123.**Another Form.**

[*Caption.*]

The demurrer of C. D., defendant, to the bill of complaint of A. B., the above-named plaintiff.

No. 124.**Another Form.**

[*Caption.*]

The demurrer of John Jones (in the bill by mistake called William Jones), the above-named defendant [*or*, one of the above-named defendants], to the bill of complaint of A. B., the above-named plaintiff.

No. 125.**Another Form.**[*Caption.*]

The joint and several demurrer of A. B. and C. D., the [*or*, two of the] above-named defendants, to the bill of complaint of A. B., the above-named plaintiff.

No. 126.**Another Form.**[*Caption.*]

The joint demurrer of A. B. and C., his wife, the [*or*, two of the] above-named defendants, to the bill of complaint of A. B., the above-named plaintiff. [*Or, if they have married since she was made a defendant, say:*] The joint demurrer of A. B. and C., his wife, lately and in the bill called C. D., spinster [*or*, widow], to the bill of complaint of A. B., the above-named plaintiff.

No. 127.**Introduction to a Demurrer to the Whole of the Bill.**[*Caption.*]

This defendant [*or*, these defendants respectively], by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true, in such manner and form as the same are therein set forth and alleged,* doth [*or*, do, *as the case may be*] demur thereto, and for cause of demurrer, sheweth [*or*, show] that, etc.

No. 128.

The same where the Demurrer is to Part of the Bill, or to the Relief.

[*As in No. 127 to the asterisk*] as to so much and such part of the bill as seeks that this defendant [*or*, these defendants]

may answer and set forth whether, etc.; and whether, etc.; and prays, etc. [*if relief be prayed*]; doth [*or, do*] demur, and for cause of demurrer sheweth [*or, show*] (1).

(1) A special demurrer should point out, specifically, by paragraph, page, or folio, or other mode of reference, the parts of the bill to which it is intended to apply. *Atwill vs. Ferrett*, 2 Blatchf., 39; *S. P.*, Chicago, St. Louis, etc., *R. R. Co. vs. Macomb*, 2 Fed. Rep., 18.

No. 129.

General Words of Conclusion (1) to a Demurrer to the Whole of the Bill.

Wherefore this defendant [*or, these defendants respectively*] demands* [*or, demand*] the judgment of this honorable court, whether he shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and prays [*or, pray*] to be hence dismissed, with his [*her, or, their*] reasonable costs in this behalf sustained.

R. Y.,
of Counsel.

(1) A demurrer to a bill in equity should be certified by counsel to be, in their opinion, well founded in point of law (see No. 134), and supported by the affidavit of the defendant that it is not interposed for delay (see No. 133). *Secor vs. Singleton*, 9 Fed. Rep., 809; 3 McCrary, 230.

No. 130.

Another Form.

Wherefore, and for divers other errors and imperfections, this defendant humbly demands, etc. [*as in No. 129, from the asterisk*].

No. 131.

Conclusion where the Demurrer is to Part only, or to the Relief.

Wherefore, and for divers other errors and imperfections appearing in the said bill, this defendant [*or, these defendants*]

humbly prays [*or*, pray] the judgment † of this honorable court, whether he [*she, or, they*] shall be compelled to make any answer to such part of the said bill as is so demurred unto as aforesaid.

R. Y.,
of Counsel for Defendant.

No. 132.

Another Form.

And, therefore, and for other good causes of demurrer in the said bill contained, as to so much of the said complainant's bill as is demurred unto as aforesaid, this defendant [*or*, these defendants] doth [*or*, do] demand the judgment, etc. [*as in No. 131, from †*].

No. 133.

Verification of Demurrer or Plea (1).

State of —,
County of —, ss.

C. D. makes solemn oath and says that he is the [president, *or other officer, as may be*, of the above-named corporation], defendant, and that the foregoing demurrer [*or*, plea] is not interposed for delay [*and if plea*, that the same is true in point of fact].

C. D.

Sworn to and subscribed before me this — day of —,
1894.

J. N.,

Notary Public in and for — County.

(1) See 31st Rule in Equity.

No. 134.

Certificate of Counsel (1).

I hereby certify that in my opinion the foregoing demurrer [*or*, plea] is well founded in point of law.

R. Y.,
of Counsel for Defendant.

(1) See 31st Rule in Equity.

No. 135.**Demurrer to Part of Bill only (1).**

[*Title and commencement.*]

This defendant [*or, these defendants respectively*], by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true, in such manner and form as the same are therein set forth and alleged, as to so much and to such parts of the said bill as seeks that this defendant may answer and set forth whether, etc.; and whether, etc.; and prays [*if relief be prayed*], doth demur, and for cause of demurrer sheweth that [*state causes of demurrer*]. Wherefore, and for divers other errors and imperfections appearing in the said bill, the defendant prays the judgment of this honorable court whether he shall be compelled to make any answer to such part of the said bill as is so demurred unto as aforesaid, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

Y. & Y.,

Solicitors for Defendant.

R. Y.,

of Counsel.

(1) There must be an affidavit and certificate of counsel. See 31st Rule in Equity.

For forms of Affidavit and Certificate, see No. 133 and No. 134.

No. 136.**General Demurrer for Want of Equity (1).**

[*Caption.*]

The demurrer of C. D., defendant, to the bill of complaint of A. B., plaintiff.

This defendant [*or, these defendants respectively*], by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true, in such manner and form as the same are therein set forth and alleged, doth [*or, do*] demur thereto, and for cause of demur-

rer sheweth [*or, show*] that the said plaintiff has not, in and by said bill, made or stated such a cause as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for, from or against this defendant [*or, these defendants*]; wherefore this defendant [*or, these defendants*] demand the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

R. Y.,

Solicitor for Defendant.

(1) See note to No. 135.

No. 137.

Demurrer Omitting Several Grounds.

[*Caption.*]

The demurrer of the above-named defendant, C. D., to the bill of complaint of the above-named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, demurs to the said bill. And for causes of demurrer shows,

I. That it appears by the plaintiff's own showing by the said bill that he is not entitled to the relief prayed by the bill against this defendant.

II. That it appears by the said bill that there are divers other persons who are necessary parties to the said bill, but who are not made parties thereto. And in particular it appears that the said C. D. has been duly adjudicated a bankrupt, and that S. M. has been duly appointed assignee of his estate, and that it appears by the said bill that said S. M., as assignee, as aforesaid, is a necessary party to the said bill; but that said S. M. is not made a party thereto.

III. That the said bill is exhibited against these defendants, and against several other defendants to the said bill,

for several and distinct and independent matters and causes which have no relation to each other, and in which, or, in the greater part of which, this defendant is in no way interested or concerned, and ought not to be implicated.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, this defendant demurs thereto, And he prays the judgment of this honorable court whether he shall be compelled to make any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

R. X.,

Solicitor and of Counsel for Defendant.

See note to No. 135.

No. 138.

Demurrer and Answer (1).

[*Caption*].

The joint and several demurrer of C. D. and E. F. to *part*, and the joint and several answer of the same defendants to the *residue*, of the original bill of complaint of A. B. and S. B., plaintiffs.

These defendants, to so much of the plaintiffs' bill as prays that they may be decreed to transfer to the said plaintiffs, as the executors of M. L. in the said bill mentioned, the 21-64th shares of the ship called —, in the said bill mentioned, and that the said defendant C. D. may be decreed to transfer to the plaintiffs the 21-64th shares of the brig or vessel called —, in the said bill mentioned, and to so much of the said bill as prays that an account may be decreed to be taken of all the dealings and transactions between these defendants and the said M. L., with respect or in relation to the said two vessels, and of all sums of money respectively received and paid by these defendants and the said M. L., respectively, or by any other person by their or any of their respective order, or for their or any of their use, and that these defendants should be decreed to pay what should be found due thereon,

so far as such dealings and transactions and sums of money, or any or either of them, relate to or concern the said 21-64th shares of the said vessel called —, or the said 21-64th shares of the said vessel called —, and the freights or freight, or any shares or share of the freights or freight, of such vessels or either of them, and to so much of the said bill as prays further or other relief with respect or in relation to the said shares of the said two vessels respectively or the freight thereof respectively.

[*Cause of demurrer.*] These defendants do demur, and for cause of demurrer show that the said plaintiffs have not made or stated such a case as entitles them in a court of equity to the relief so prayed for, or any part thereof; and these defendants humbly pray the judgment of the court as to such parts of the bill as they have so demurred to as aforesaid.

[*Answer to residue of bill.*] And as to the residue of the said bill, that is to say, all the discovery, and the rest of the relief, by the said bill prayed, these defendants for answer thereto severally say, they admit it to be true that Messrs. G. & S. were, in the month of, etc., engaged in building at Liverpool, on their own account, a certain brig or vessel, and that in the month of —, these defendants C. D. and E. F. did carry on business together in partnership as wine merchants and general dealers [*continue with answer*].

(1) See note to No. 135.

No. 139.

General Form of Demurrer, Plea, and Answer (1).

[*Caption.*]

The demurrer, plea, and answer of C. D., the above-named defendant [*or*, one of the above-named defendants] to the bill of complaint [*or*, amended bill of complaint] of the above-named plaintiff.

(1.) *Demurrer.* I, the defendant C. D., by protestation, not confessing or acknowledging all or any of the matters

and things in the said bill contained to be true, in such manner and form as the same are therein set forth and alleged, as to so much of the said bill as seeks [*state what*], and also as to so much of the said bill as seeks [*state what*], do demur thereto.

And as to the discovery and relief sought by the said bill, save so much thereof as relates to the premises therein mentioned to be situate at S., in the county of —, for cause of demurrer I show that [*state what*].

And as to so much of the said discovery and relief as relates to the said premises at S., aforesaid, for cause of demurrer I show that [*state what*].

Wherefore and for divers other good causes of demurrer appearing in the said bill, I pray the judgment of this honorable court whether I shall be compelled to make any answer to such parts of the said bill as I have hereinbefore demurred to.

(2.) *Plea.* And I, the defendant C. D., not waiving my said several demurrers, but wholly relying thereon, as to so much of the said bill as seeks [*state what*], and also as to so much of the said bill as seeks [*state what*], do plead thereto; and for plea say that [*state what*]; and I do aver that [*state what*].

All which last-mentioned matters and things I do plead in bar to so much of the said bill as is hereinbefore pleaded to; and I humbly pray judgment of this honorable court whether I ought to make any further answer to so much of the said bill as is hereinbefore pleaded to.

(3.) *Answer.* And I, the defendant C. D., not waiving my said several demurrers and plea, but wholly relying and insisting thereon, for answer to so much of the said bill as I am advised it is material or necessary for me to make answer unto, say as follows [*continue with answer*] (2).

(1) See Beach's Modern Eq. Prac., Sec. 241.

Where a demurrer is interposed the bill is to be taken as true. Taylor *vs.* Bradshaw, 17 Am. Dec., 132. A general demurrer admits all

well-pleaded allegations of a bill. *Smith vs. Allen*, 21 Am. Dec., 33. A demurrer is, in a legal sense, an answer to the bill, though not an answer as that term is used in the common language of practice. *New Jersey vs. New York*, 6 Peters, 323.

(2) See note to No. 135.

No. 140.

Demurrer for Want of a Suggestion that the Evidence of the Plaintiff's Demand is Not in his Power (1).

[*Title, commencement, and introduction.*]

As to so much and such part of the said plaintiff's bill as prays relief, in respect of the bond bearing date —, for the sum of twenty thousand dollars in the said bill, stated to have been made and entered into, for the payment of ten thousand dollars and interest on the — day of — last, by this defendant, or the money alleged, by the said bill, to be now due to the said plaintiff from this defendant thereon, this defendant demurs, and for cause of demurrer shows that the said bond appears by the said bill to have been taken by the said plaintiff, in his own name, and to be now in the possession, custody, or power of the said plaintiff, who therefore has a remedy for his demand at law. Wherefore, etc. [*See No. 130.*]

(1) See note to No. 135.

No. 141.

Demurrer to a Bill for Relief Filed by a Person Beneficially Entitled where a Right of Action at Law was in a Trustee Suggesting a Refusal by the Trustee to Suffer an Action to be Brought in his Name (1).

[*Title, commencement, and introduction.*]

As to so much and such part of the said bill as seeks to compel these defendants to pay the sum of five thousand dollars, or to make the said plaintiffs satisfaction for any loss that has happened to the said ship, these defendants

respectively demur; and for cause of demurrer show that if the policy of the insurance in the said bill mentioned was forfeited, a proper action at law did and would lie to recover the money due thereon, and if the said plaintiffs be entitled to any such relief as aforesaid, as prayed in and by their said bill, they might have a complete and adequate remedy by an action at law, where they ought and would be put to prove their interest in, and the loss of, the said ship. Wherefore, etc. [*See No. 130.*]

(1) See note to No. 135.

No. 142.

Demurrer for Want of Parties (1).

[*Title, commencement, and introduction.*]

That it appears by the said plaintiff's said bill that S. B., therein named, is a necessary party to the said bill, inasmuch as it is therein stated that C. D., the testator in the said bill named, did in his lifetime, by certain conveyances made to the said S. B., in consideration of — dollars, convey to him, by way of mortgage, certain estates in the said bill particularly mentioned and described, for the purpose of paying the said testator's debts and legacies; but the said plaintiff has not made the said S. B. a party to the said bill. Wherefore, etc. [*See No. 130.*]

(1) A demurrer to a bill for want of the necessary parties must name the proper parties. *Dwight vs. Central Vt. R. Co.*, 9 Fed. Rep., 785; 20 Blatchf. 200.

See note to No. 135.

No. 143.

Demurrer for Multifariousness (1).

[*Title, commencement, and introduction.*]

That it appears by the said bill that the same is exhibited by the said plaintiff against this defendant, and C. D., E. F.,

and G. H., as defendants thereto, for several distinct matters and causes, in many whereof, as appears by the said bill, this defendant is in no way interested; and, by reason of such distinct matters, the said bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof; and by joining distinct matters together, which do not depend on each other, the proceedings in the progress of the said suit will be intricate and prolix, and this defendant put to unnecessary charges and expenses in matters which in no way relate to or concern him. Wherefore, etc. [See *No. 130.*]

(1) See Beach's Modern Eq. Prac., Sec. 262. There is no definite rule as to what constitutes multifariousness in a pleading in chancery. Each case must depend upon its own circumstances, and much must be left to the sound discretion of the court. *Gaines vs. Chew*, 2 How., 619, 642; and note to Banks' ed. S. P., *Oliver vs. Piatt*, 3 How., 333 (411); affirming, 3 McLean, 27; *McLean vs. Lafayette Bank*, 3 McLean, 415.

The objection of multifariousness can not be insisted upon by the defendant as a matter of right at the hearing. It must be taken advantage of by the plea, answer, or demurrer. And although the court may take notice of it, at any time, *sua sponte*, this will not be done at so late a period as the hearing, unless it is essential to the due administration of justice. An appellate court, *a fortiori*, would not entertain it, unless forced to do so by a moral necessity, *Oliver vs. Piatt*, 3 How., 333 (412); affirming, 3 McLean, 27; *Nelson vs. Hill*, 5 How., 127; and note to Banks' ed.

A bill is subject to demurrer for multifariousness if one of the two complainants has no standing in court, or they set up antagonistic causes of action, or the relief for which they respectively pray in regard to a portion of the property sought to be reached involves totally distinct questions, requiring different evidence, and leading to different decrees. *Walker vs. Powers*, 104, U. S. 245. But it is not multifarious simply because it prays for different modes of relief against one injury (*Wells vs. Bridgeport, etc., Co.*, 79 Am. Dec., 250; *Way vs. Bragaw*, 84 Am. Dec., 147); or where the joinder therein of two distinct matters prevents a needless multiplicity of suits, and neither inconveniences the defendants nor causes them additional expense (*Stafford Nat. Bank vs. Sprague*, 8 Fed. Rep., 377; 19 Blatchf. 529); or where all the matters in controversy are between the same

parties, arise out of the same transaction, from breaches of the same instrument, and can be settled in one suit. *Pacific R. R. Co. vs. Atlantic & Pacific R. R. Co.*, 20 Fed. Rep., 277.

So, also, a bill which embraces the distinct claims of several parties is not open to the objection of multifariousness if the interests of all are so mingled in a series of complicated transactions that entire justice could not be conveniently obtained in separate and independent suits (*Oliver vs. Piatt*, 3 How., 333 (411); affirming, 3 McLean, 27); as where it joins defendants holding distinct tracts of land under distinct conveyances, if the main ground of defense is common to all of the defendants. *Gaines vs. Mauseaux*, 1 Woods, 118. See, also, *Shields vs. Thomas*, 18 How., 253; *Turner vs. American Baptist Missionary Union*, 5 McLean, 344.

See also note to No. 135.

No. 144.

Demurrer to a Bill Brought for Part of a Matter only (1).

[*Title, commencement, and introduction.*]

That the said plaintiff, by his said bill, in order to split the cause, and create a multiplicity of suits, seeks only to recover a part of an entire debt, thereby stated to be due to him from this defendant; and in respect of other parts of the said debt has, as appears by his said bill, filed two several other bills of complaint in this honorable court against this defendant. Wherefore, etc. [*See No. 130.*]

(1) See note to No. 135.

No. 145.

Demurrer to a Bill of Interpleader, Because it Does not Show any Claim of Right in the Defendant (1).

[*Title, commencement, and introduction.*]

For that the said plaintiff has not in and by his said bill of interpleader shown any claim, or right, title, or interest whatsoever, in this defendant in or to the said estate called A., in the said bill particularly mentioned and described, in respect whereof this defendant ought to be compelled to interplead with C. D. in the said bill named, and the other defendant thereto. Wherefore, etc. [*See No. 130.*]

(1) See note to No. 135.

No. 146.

Demurrer to a Bill of Interpleader, Because the Plaintiff Shows no Right to Compel the Defendants (Whatsoever Rights they may Claim) to Interplead (1).

[Title, commencement, and introduction.]

That the said plaintiff has not, in and by his said bill, shown any right and title whatsoever to compel this defendant, and A. B., the other said defendant to the said bill, to interplead. Wherefore, etc. *[See No. 130.]*

(1) See note to No. 135.

No. 147.

Demurrer to a Bill of Interpleader, for Want of the Necessary Affidavit (1).

[Title, commencement, and introduction.]

That although the said plaintiff's said bill is on the face thereof a bill of interpleader, and prays that this defendant and the other defendants thereto may interplead together concerning the matters therein mentioned, and may be restrained, by the order and injunction of this honorable court, from proceeding at law against the said plaintiff, touching such matters, yet the said plaintiff has not annexed an affidavit to his said bill, that he does not collude concerning such matters, or any of them, with this defendant and the other defendants thereto, or any or either of them, which affidavit ought, as this defendant is advised, according to the rules of this honorable court, to have been made by the said plaintiff, and annexed to the said bill. Wherefore, etc. *[See No. 130.]*

(1) See note to No. 135.

No. 148.**Demurrer to a Bill Exhibited by an Infant, where no Next Friend is Named (1).**

[*Title, commencement, and introduction.*]

That the said plaintiff, who appears by the said bill to be an infant under the age of twenty-one years, has exhibited his said bill without any person being therein named as his next friend. Wherefore, etc. [*See No. 130.*]

(1) See note to No. 135.

No. 149.**Demurrer to a Bill where the Plaintiff Claimed Under a Will, and it was Apparent on the Face of the Bill that he had no Title (1).**

[*Title, commencement, and introduction.*]

That the said plaintiff has not, as appears by his said bill, made out any title to the relief thereby prayed. Wherefore, etc. [*See No. 130.*]

(1) See note to No. 135.

No. 150.**Demurrer on the Ground of the Statute of Frauds (1).**

[*Title, commencement, and introduction.*]

That it appears by the said bill that neither the promise or contract which is alleged by the said bill, and of which the plaintiff by the said bill seeks to have the benefit, nor any memorandum or note thereof, was ever reduced into writing or signed by this defendant [*or, these defendants or either or any of them*], or any person authorized thereunto, within the meaning of the statute, viz.: section — of chapter —, of the General Statutes (2) of the State of —, for the prevention of frauds and perjuries.

(1) See Beach's Modern Eq. Prac., Sec. 260.

(2) State the chapter and section relating to frauds and known as the Statute of Frauds.

See note to No. 135.

No. 151.**Demurrer to Supplemental Bill (1).**

[*Caption.*]

The demurrer of C. D., defendant, to the supplemental bill of A. B., plaintiff.

This defendant [*as in No. 127*], that this defendant, as appears by the said supplemental bill, is not a party to the original bill therein in part stated and set forth; nor does it appear by the said supplemental bill that any new matter has or is pretended to have arisen since the said original bill was filed, or that there is any reason why this defendant should not, if necessary, be made a party thereto by amendment. Wherefore, etc. [*conclude as in No. 129*].

(1) See note to No. 135.

No. 152.**Demurrer to a Bill of Review and Supplemental Bill (1).**

[*Caption.*].

These defendants, by protestation, etc. [*as in No. 127*], do demur in law thereto, and for cause of demurrer show that there are no errors in the record and premises, and in the decree of the — day of —, in the said bill of review and supplemental bill mentioned, nor is there any sufficient matter alleged in the said bill of review and supplemental bill to entitle the said plaintiff to reverse the said decree; and for divers other defects and errors appearing in the said bill of review and supplemental bill, these defendants do demur in law thereto; and these defendants, for further cause of demurrer, humbly show that, under the rules of this honorable court, no supplemental or new bill in the nature of a bill of review, grounded upon any new matter discovered or pretended to be discovered since the pronouncing of any decree of this court, in order to the reversing or varying of such decree, shall be exhibited without the special leave of

the court first obtained for that purpose; wherefore, and for that the said plaintiff does not allege by the said bill of review and supplemental or new bill that he had first obtained leave of this court for exhibiting the said bill of review and supplemental or new bill, these defendants demur in law thereto, and humbly pray the judgment of the court whether they ought to be compelled to put in any further or other answer to the said plaintiff's said bill of review and supplemental or new bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

R. Y.,

Counsel for Defendant.

(1) See note to No. 135.

No. 153.

Demurrer to Bill of Review (1).

[*Caption.*]

The demurrer of C. D., defendant, to the bill of review of A. B., plaintiff.

[*Introduction, as in No. 127.*] That by the constant rules of this court no bill of review ought to be admitted to alter or change matters decreed, only for error in law appearing in the body of the decree as it is drawn up and enrolled, or for new matter arising since the decree, or such matter of which the plaintiff in the bill of review could not have notice at the time of the decree; but this defendant is advised that the matters assigned by the said bill of review for cause of reversal of the said decree, as the same thereby appear by said plaintiff's bill, are neither any error in law apparent in the body of this decree, nor any such new matter as aforesaid, but a misjudgment in matters of form only, and not in point of right; and that the statement contained in the said bill of review of the abatement of the suit before the decree passed is merely an exception in point of form. Wherefore, etc. [*See No. 129.*]

(1) See note to No. 135.

PLEAS.**No. 154.****The Title.**

[*Caption.*]

The plea of C. D., defendant [*or*, defendants], to the bill of complaint of A. B., plaintiff.

No. 155.**The Commencement of a Plea.**

[*Caption and title.*]

This defendant [*or*, these defendants respectively], by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill of complaint mentioned and contained to be true, in such sort, manner, and form as the same are therein set forth and alleged, for plea to the whole of the said bill, [*or*, to so much and such part of the said bill as prays, etc., *or*, seeks a discovery from this defendant (*or*, these defendants). Whether, etc.]

No. 156.**The Conclusion of a Plea.**

All which matters and things this defendant doth aver [*or*, these defendants do aver] to be true, and he pleads [*or*, they plead] the said [statute, *or*, release, etc., *as the case may be (in bar)*] to the said plaintiff's bill [*or*, *if the plea extend to part only*, to so much of the said bill as hereinbefore particularly mentioned], and prays [*or*, pray] the judgment of this honor-

able court whether he [*or, they*] should be compelled [*or, ought to be required*] to make any other or further answer to the said bill [*or, to so much of the said bill as is hereinbefore pleaded to*], and prays [*or, pray*] to be hence dismissed with his [*or, their*] costs and charges in that behalf, most wrongfully sustained (1).

R. Y.,

of Counsel for Defendant.

(1) See 31st Rule in Equity.

No. 157.

Verification of Plea.

See 31st Rule in Equity, and for form of Affidavit see No. 133.

No. 158.

Certificate of Counsel.

See 31st Rule in Equity, and for form of Certificate see No. 134.

No. 159.

Plea of Infancy to a Bill Exhibited Without a Prochein Ami (1).

[*Title and commencement.*]

That the said plaintiff, before and at the time of filing his said bill in which he appears as the sole plaintiff, was, and now is, an infant under the age of twenty-one years, that is to say, of the age of — or thereabouts. Therefore, etc. [*See No. 161.*]

(1) There must be an affidavit and certificate of counsel, 31st Rule in Equity. For forms see No. 133 and No. 134.

No. 160.**Plea of Lunacy (1).***[Title and commencement.]*

That the said plaintiff, who by himself alone attempts to sustain an injunction in this suit, before and at the time of filing his said bill, was duly found and declared to be a lunatic, under and by virtue of a commission of lunacy, duly awarded and issued against him, as by the inquisition thereon (a true copy whereof is now in this defendant's possession, and ready to be produced to this honorable court), to which this defendant craves leave to refer, will more fully appear; and which said commission has not hitherto been superseded, and still remains in full force and effect; and the said A. B. therein named and the said plaintiff is, as this defendant avers, one and the same person, and are not other and different persons. Therefore, etc. [*See No. 161.*]

(1) See note to No. 159.

No. 161.

Plea, that the Supposed Intestate is Living, to a Bill where the Plaintiff Entitled Himself as Administrator (1).

[Title and commencement.]

That A. B., in the said bill named (to whom the said plaintiff alleges that he has obtained letters of administration, and by virtue of which letters of administration, and also under the pretense of his being the heir at law of the said A. S., the said plaintiff has commenced and prosecuted this suit), was, at the time the said plaintiff filed his said bill, and still is, alive at Paris, in the kingdom of France. Therefore this defendant demands the judgment of this honorable court, whether he shall be compelled to answer the said plaintiff's bill; and humbly prays to be dismissed with his reasonable costs in this behalf sustained.

(1) See note to No. 159.

No. 162.**Plea that the Defendant Never was Administrator (1).**

[*Title and commencement.*]

That he is not, nor ever has been, administrator of the goods or estate which were of the said E. F., deceased, in the said bill named, as the said plaintiff in his said bill has untruly alleged. Therefore, etc. [See No. 161.]

(1) See note to No. 159.

No. 163.**Plea to the Jurisdiction (1).**

[*Title and commencement.*]

The C. D. Co., the above-named defendant, specially appearing under protest for the purpose of this plea and for no other, says that it is not a corporation organized under the laws of the state of —, nor citizen nor inhabitant of said state of —, nor does it reside therein, but that it is a corporation organized under the laws of the state of —, and an inhabitant of said state of —, and residing at —, in the — district of —, where its corporate meetings are held and its corporate business transacted.

Wherefore, insisting upon its exemption from suit in this court, it says that not this court, but the — court of the United States for the — district of — has jurisdiction in the premises.

The C. D. Co.,
By C. D., President.

(1) See Act of March 3, 1887, as amended, 25 Stat. at L., 433. The objection that the defendant is not sued in the proper district must be raised by plea and not demurrer. See Beach's Modern Eq. Prac., Sec. 302. Consult note to No. 159.

No. 164.**Plea of Former Suit Depending (1).**

[*Title and commencement.*]

That at a term of the — court —, which was held in the year —, the said present plaintiff exhibited his bill of complaint in this honorable court against this defendant and one L. Y., for an account of the moneys raised by the sale of the plantations and other estates in the said plaintiff's present bill mentioned, and claiming such shares and proportions thereof, and such rights and interests therein, as he now claims by his present bill; and praying relief against this defendant in the same manner, and for the same matters, and to the same effect as the said plaintiff now prays by his said present bill; and this defendant and the said L. Y. appeared and put in their answer to the said former bill, and the said plaintiff replied thereto, and witnesses were examined on both sides, and their depositions duly published, and the said former bill and the several proceedings in the said former cause, as this defendant avers, now remain depending, and as of record in this honorable court, the said cause being yet undetermined and undismissed; all which several matters and things this defendant doth aver, and pleads the said former bill, answer, and the several proceedings in the said former suit, in bar to the said plaintiff's present bill; and humbly demands the judgment of this honorable court, whether he shall be put to make any further or other answer thereto; and prays to be hence dismissed with his costs and charges in this behalf sustained.

(1) See note to No. 159.

It is a general rule that a plea ought not to contain more defenses than one. Various facts can never be pleaded in one plea unless they are all conducive to the single point on which the defendant means to rest his defense. *Rhode Island vs. Massachusetts*, 14 Peters, 210.

No. 165.

Plea of Stated Account (1).

[*Title and commencement.*]

As to so much and such parts of the said plaintiff's bill as seeks an account of and concerning the dealings and transactions therein alleged to have taken place between the said plaintiff and this defendant at any time before the — day of —, in the year —, this defendant for plea thereto says, that on the — day of —, which was previously to the said bill of complaint being filed, the said plaintiff and this defendant did make up, state, and settle an account in *writing*, a counterpart whereof was then delivered to the said plaintiff, of all sums of money which this defendant had before that time, by the order and direction, and for the use of the said plaintiff received, and of all matters and things thereunto relating, or at any time before the said — day of —, being or depending between the said plaintiff and this defendant (and in respect whereof the said plaintiff's bill of complaint has been since filed), and the said plaintiff, after a strict examination of the said account, and every item and particular thereof, which this defendant avers according to his best knowledge and belief to be true and just, did approve and allow the same, and actually received from this defendant the sum of — dollars, the balance of the said account, which by the said account appeared to be justly due to him from this defendant; and the said plaintiff thereupon, and on the — day of —, gave to this defendant a receipt or acquittance for the same, under his hand, in full of all demands, and which said receipt or acquittance is in the words and figures following, that is to say [*here state the receipt verbatim*], as by the said receipt or acquittance, now in the possession of this defendant, and ready to be produced to this honorable court, will appear. Wherefore, etc. [*Conclude as in No. 156.*]

(1) A plea of stated account obviously constitutes a bar to a suit in equity for an accounting, since in that case the remedy at law is en-

tirely adequate; but of course a stated account may be opened for fraud and error. Pom. Eq. Jur., Sec. 1421.

Parties who have long acquiesced in settlements of accounts or other mutual dealings are not permitted to reopen or disturb them; and this is true even though the parties stood in confidential relations towards each other, as trustee and *cestui que trust*, principal and agent, and the like, and the settlement embraced matters growing out of such relations. Pom. Eq. Jur., Sec. 820.

See 31st Rule in Equity, and note to No. 159.

No. 166.

Plea of Want of Interest of Defendant (1).

[*Title and commencement.*]

As to so much of and such parts of the plaintiff's bill as charges that this defendant is interested in the personal estate of A. B., the testator in the said bill named, and seeks an account of the said testator's personal estate, this defendant pleads thereto, and for plea says that he is merely a subscribing witness to said testator's will, and in no wise interested therein; and this defendant avers that he has not, nor ever had, or pretended to have, nor does he or did he ever claim any right, title or interest whatsoever in the personal estate of the said testator, or any part thereof, and that the said plaintiff has no right to institute this or any other suit against him in respect thereof. All which said matters and things this defendant doth aver and plead in bar to so much of the said plaintiff's bill as hereinbefore particularly mentioned and pleaded to. And this defendant, not waiving his said plea, but relying thereon, and for better supporting the same, for answer to so much of the said bill as aforesaid, saith he denies that he now is, or ever was, interested in the personal estate of the said testator or any part thereof. [*Conclude as in No. 156.*]

(1) See note to No. 159.

No. 167.

Plea of a Will (1).

[*Title and commencement*].

As to so much and such part of the said plaintiff's bill as seeks [*that a receiver may be forthwith appointed to receive the rents and profits of the real estates, late of J. T., deceased, in the said bill named, and now in the possession of this defendant*], and that this defendant may account with the said plaintiff for the rents and profits thereof, and that this defendant may be restrained by the order and injunction of this honorable court from felling, etc., timber, etc., growing thereon, or which seeks to set aside the will of the said J. T., or which seeks any relief relative thereto; this defendant doth plead thereto, and for plea saith, that the said J. T. being before and at the time of making his will, seized to him and his heirs, of and in divers manors, etc., in the several counties of, etc., of the yearly value of eleven hundred dollars or thereabouts, and being of sound mind, memory, and understanding, duly made and published his last will and testament in writing, bearing date the — day of —, which was executed by him in the presence of, and attested by, J. O., J. H., and R. S., and thereby gave, etc., [*setting forth the will, under which the defendant had an estate for life in the testator's real estate, with remainder to the defendant's sons, and that the testator appointed the defendant executor of his said will*]; and the said James Thompson, being so seized or entitled as aforesaid, died on the — day of — last, without having altered or revoked his said will; and this defendant, soon after the death of the said testator, entered on the said real estates devised to him in manner aforesaid, and has ever since been in the enjoyment or receipt of the rents and profits thereof. Therefore, etc. [See No. 156.]

(1) See note to No. 159.

No. 168.**Plea of an Award (1).**

[*Title and commencement.*]

That divers disputes, controversies, and differences having arisen, and being depending, between the said plaintiff and this defendant concerning an agreement for the purchase by this defendant, from the said plaintiff, of the lease, good-will, and fixtures of a certain house and premises, used as a baker's shop, in —, in the county of —; for the settling and adjusting such variances and controversies, the said plaintiff and this defendant, by two several bonds or writings, obligatory, bearing date respectively the — day of —, became reciprocally bound to each other in the penal sum of — dollars to be paid to each other, with conditions to the said writings obligatory annexed to make void the same, if the said plaintiff and this defendant, their respective executors, administrators, and assigns should obey and perform the award, arbitrament, judgment, final end, and determination of I. S., an arbitrator indifferently chosen between the said parties, concerning the said disputes, controversies, and differences, in respect of the said agreement for the purchase of the lease, good-will, and fixtures of the premises aforesaid, so as the said award under the hand of the said arbitrator should be made and set down in writing under his hand, ready to be delivered to the parties in difference on or before the — day of — then next, but now long since past; and the said I. S. having taken upon himself the burden of the said award, and having deliberately and at large heard, read, and duly and maturely weighed and considered all and singular the allegations, vouchers, proofs, and evidences brought and produced before him, by and on the part and behalf of the said plaintiff and this defendant, touching the said matters in dispute and difference between them, and referred to him as aforesaid, did within the time limited for that purpose by the said bonds, that is to say, on the — day of

—, duly make his award in writing under his hand and seal, of and concerning the matters aforesaid (one part whereof was delivered to this defendant), and did thereby award and find that the aforesaid agreement between the defendant and the said plaintiff, relative to the aforesaid lease, goodwill, and fixtures, was not binding upon them, and the said arbitrator did therefore declare the same void accordingly; and the said arbitrator did thereby award and declare that the said plaintiff had no claim or demand whatsoever against this defendant, in respect or on account of the said agreement, as by the said award, reference being thereunto had, will more fully appear; and this defendant avers that the said award hath hitherto remained and still is unimpeached, and in full force and effect; and that the same was made previously to the said plaintiff's bill being filed in this honorable court for the specific performance of the said agreement so declared void by the said award as aforesaid. Therefore, etc (2).

(1) An award is treated as the continuance of the agreement to submit. If it directs acts to be done, which if stipulated for in a contract would render such contract capable of enforcement, then the award itself may be specifically enforced. Pom. Eq. Jur., Sec. 1402.

(2) See 31st Rule in Equity, and note to No. 159; and for closing words see No. 156.

No. 169.

Circumstances Bringing a Case Within the Protection of a Statute, viz., the Statute of Limitations, or the Statute of Frauds (1)

[*Title and commencement.*]

As to so much of the bill as seeks an account and discovery of the estate and effects of H. C., Esq., deceased, this defendant's testator, or that seeks a satisfaction for, or in respect of, any money received by the said H. C., for or on account of I. G., in the said bill named, or for or on account of the said

plaintiff; or that seeks a discovery of how many hogsheads of tobacco or rice, or any other commodities pretended to have been consigned to the said H. C., or that seeks a satisfaction for the same; or that seeks a discovery or satisfaction for any of the money, goods, or effects of the said I. G., come to the hands of this defendant, since the decease of the said H. C.; this defendant pleads thereto, and for plea says, that the said I. G., under whom this defendant claims, departed this life in or about the year —, and that the said H. C., this defendant's testator, afterwards also departed this life in the month of —, in the year —, and that the matters and effects pretended to have been received by the said H. C., or by this defendant, and the goods and commodities pretended to have been consigned (if any sums of money, goods, or effects were received by the said H. C., or by this defendant, which this defendant does not admit), were received by the said H. C., or by this defendant above six years before this defendant was served with any process of this honorable court to answer the said bill, or any process whatsoever was sued against this defendant to account for the same; and that if the said plaintiff had any cause of action or suit against this defendant, or against the said H. C. for or concerning any of the said matters, which this defendant does not admit, that such cause of action or suit did not accrue or arise within six years before the said bill was filed, or this defendant served with process; nor did this defendant, or his testator, at any time within six years before the said bill was exhibited, or process sued out against this defendant, promise or agree to come to any account, or to make satisfaction, or to pay any sum or sums of money, for or by reason of any of the said matters; and that by a certain act of —, for the limitation of actions and suits at law, it was enacted, etc. [*state the statute to be pleaded*], and this defendant pleads the several matters aforesaid in bar to so much of the plaintiff's said demand as aforesaid, and prays the judgment of this honorable court thereon; and this defendant for answer, etc.

(1) See 31st Rule in Equity, and note to No. 159.

In the earlier forms of the statute of limitations the provisions were in express terms confined to actions at law; and yet courts of equity, proceeding upon the analogy of these enactments, in most suits to enforce equitable titles to real estate and equitable personal claims, applied the statutory periods. In certain kinds of suits, however, especially those brought against trustees to enforce express trusts, the analogy of the statute was not followed. The modern forms of these statutes in the American States generally declare in express terms that periods of limitation shall apply to all equitable suits as well as legal actions. Pom. Eq. Jur., Sec. 419.

Courts of equity have also been in the habit of applying the statute of limitations as a bar, by analogy, in all ordinary cases, even though equitable suits were not expressly included within the statutory provisions. See *Kane vs. Bloodgood*, 7 Johns. Ch., 90; *Lansing vs. Starr*, 2 Johns. Ch., 150.

There is no technical rule observed by the court of chancery as to the form of a plea of the statute of limitations. A plea which sets up an adverse possession of forty years, while the period required by the statutes of the state to bar a recovery is twenty years, is good; nor is it necessary to make any express reference to the statutes of the state. *Harpending vs. Reformed Protestant Dutch Church*, 16 Peters, 455.

No. 170.

Plea of Purchase for a Valuable Consideration without Notice (1).

[*Title and commencement.*]

As to so much of the said bill as seeks an account of what is due and owing to the said plaintiff, in respect of the annuity of — dollars therein mentioned, and stated to be charged upon, and issuing out of, the hereditaments and premises therein and hereinafter mentioned, this defendant pleads thereto, and for plea says that A. B., previously to and on the — day of —, was, or pretended to be, seized in fee-simple, and was in, or pretended to be in, the actual possession of all these manors, in the said bill particularly mentioned and described, free from all incumbrances what-

soever; and this defendant, believing that the said A. B. was so seized and entitled, and that the said hereditaments and premises were in fact free from all encumbrances, on the — day of —, agreed with the said A. B. for the absolute purchase of the fee-simple and inheritance thereof; whereupon certain indentures of lease and release, bearing date respectively on, etc., between the said A. B. of the one part, and this defendant of the other part, were duly made and executed; and by the said indenture of release the said A. B., in consideration of the sum of — dollars, paid to him by this defendant, granted, bargained, sold, released, and confirmed unto this defendant, all, etc. [*set out the parcels verbatim from the deed*], to hold unto, and to the use of this defendant, his heirs and assigns forever; and in the said indenture of lease is contained a covenant from the said A. B. with this defendant, that he, the said A. B., was absolutely seized of the said hereditaments and premises, and that the same and each of them and every part thereof were and was free from all encumbrances; as by the said indentures of lease and release respectively, reference being thereunto had, will more fully appear; and this defendant avers that the said sum of — dollars, the consideration money in the said indenture of release mentioned, was actually paid by this defendant to the said A. B., at the time the said indenture of release bears date; and this defendant also avers that at or before the respective times of the execution of the said indentures of lease and release by the said A. B. and this defendant, and of the payment of the said purchase-money, he, this defendant, had no notice whatsoever of the said annuity of — dollars, now claimed by the said plaintiff, or of any other encumbrance whatsoever, that in anywise affected the said hereditaments and premises, so purchased by this defendant as aforesaid, or any of them, or any part thereof; and this defendant insists that he is a *bona fide* purchaser of the said hereditaments and premises for a good and valuable consideration, and without any notice of the said annu-

ity claimed by the plaintiff; all which matters and things this defendant avers and pleads in bar to so much of the said plaintiff's bill as is hereinbefore particularly mentioned; and prays the judgment of this honorable court, whether he should make any further answer to so much of the said bill as is hereinbefore pleaded to; and this defendant, not waiving his said plea, but relying thereon, and for better supporting the same, for answer says that he had not at any time before, or at the time of, purchasing the said hereditaments and premises, or since, until the said plaintiff's bill was filed, any notice whatsoever, either expressed or implied, of the said annuity of — dollars claimed by the said plaintiff, or that the same or any other encumbrance whatsoever was charged upon or in anywise affected the said hereditaments and premises so purchased as aforesaid, or any of them, or any part thereof; and this defendant denies, etc. [*continue with answer*].

(1) See 31st Rule in Equity, and note to No. 159.

No. 171.

Plea of Want of Proper Parties (1).

[*Title and commencement.*]

As to so much of the said complainant's (2) bill as seeks an account from this defendant, as executor and heir at law of H. E., Esq., deceased, in the said bill named, this defendant's late brother, for what remains due and owing upon the bond in the said bill mentioned, bearing date the — day of —, in the year —, and payment by this defendant as such executor and heir at law of the said H. E., deceased, as aforesaid, of what shall be found due on taking such account; this defendant pleads thereto, and for plea says that no part of the sum of \$—, for securing the repayment whereof the said bond was executed, was paid to or received by the said H. E., but that the whole was paid unto A. W., in the

said bond and in the said bill also named, and received by him for his sole use, and that the said H. E. was only surety for the said A. W., and that the said complainant afterwards accepted a composition for what he alleged to be due on said bond from the said A. W. without the privity of the said H. E. in his lifetime, or this defendant since the death of the said H. E., which took place on or about the — day of —, as in the said bill mentioned, since which no demand has been made on this defendant for any money alleged to be due on the said bond; and that the said A. W. died several years ago, seized of considerable real estates, and also possessed of a large personal estate, and that his heir at law, or the devisee of his real estate, and also the representative of his personal estate, ought to be, but are not, made parties to the said bill. Therefore, etc. [See No. 156.]

(1) See note to No. 159.

(2) See note to No. 67.

No. 172.

Plea that the Discovery Sought by the Bill would Betray the Confidence Reposed in the Defendant as an Attorney (1).

[*Title and commencement.*]

As to so much and such part of the said bill as seeks a discovery, from this defendant of the [*state what*], of E. F., another defendant in the said bill named; this defendant pleads thereto, and for plea says that he, this defendant, is duly admitted and sworn an attorney of the several courts of the state of —, and also a solicitor of this honorable court, and has for several years past practiced, and now practices, as such; and this defendant was employed in that capacity by E. F., the said other defendant, and in that capacity only, or by means of such employment only, has had the inspection and perusal of [*state what*], or any part or parts thereof, for the use and service of his said clients, and therefore ought

not, as this defendant is advised, to be compelled to discover the same. Wherefore, etc. [*See No. 156.*]

(1) A party will not be compelled to disclose the legal advice given him by his attorney or counsel, nor the facts stated, nor the matter communicated between himself and them in reference to the pending suit, or to the dispute which has resulted in the present litigation; nor, on the other hand, will these professional advisers be compelled or permitted to disclose the matters which they have learned or communicated in the same manner. Pom. Eq. Jur., Sec. 203.

See also 31st Rule in Equity and note to No. 159.

No. 173.

Plea to a Bill of Revivor (1).

[*Title and commencement.*]

That the said plaintiff is not, as stated in the said bill of revivor, the personal representative of A. B., deceased, the testator therein named, and as such entitled to revive the said suit in the said bill of revivor mentioned against this defendant; but the said plaintiff is the administrator only of C. D., late of —, deceased, who died intestate on the — day of — last, and was the sole executor of the said A. B.; and that letters of administration of the goods and estate of the said A. B., unadministered by the said C. D. in his lifetime, have since the death of the said C. D. been duly granted by the proper court to E. F., of —, who thereby became, and now is, the legal personal representative of the said A. B.

Wherefore the said defendant demands the judgment of this honorable court whether he shall be compelled to answer the said plaintiff's bill, and humbly prays to be dismissed with his reasonable costs in this behalf sustained. C. D.

(1) See note to No. 159.

No. 174.**Plea to Supplemental Bill (1).**

[*Title and commencement.*]

That the several matters and things in the said plaintiff's present bill, stated and set forth by way of supplement, arose and were well known to the said plaintiff, before and at the time the said plaintiff filed his original bill in this cause; and that such said several matters and things can now be introduced, and ought so to be, if necessary, by amending the original bill. Wherefore, etc. [*continue as in No. 173*].

(1) See note to No. 159.

No. 175.**Plea to Part, and Answer to Residue of Bill.**

[*Caption.*]

The plea of C. D., defendant [*or, one of the defendants*], to part, and the answer of the same defendant to the residue, of the bill of complaint of A. B., plaintiff [*or, the joint plea and answer, or, the joint and several plea and answer, according to circumstances.*]

This defendant, to all the relief sought by the said bill, and also to all the discovery thereby sought, except the discovery sought by or in respect of [*so much of the said bill as prays that this defendant may answer and set forth*], whether, etc. [*here the language of the interrogatories which it is necessary to answer must be introduced*], this defendant does plead in bar, and for plea says, etc. [*here follows the plea*].

All which matters and things this defendant avers to be true, and does plead the same in bar to the whole of the said bill, except such part of the discovery thereby sought as aforesaid; and this defendant humbly prays the judgment of this honorable court whether he ought to be compelled to make any further or other answer to so much of the said bill as is hereby pleaded to, and he prays to be hence dismissed with his costs.

And for answer to such parts of the said bill as are excepted this defendant says that, etc. [*here the answer follows*].

ANSWERS.**No. 176.****The Commencement.**

[*Caption.*]

The answer of C. D., the defendant [*or*, one of the defendants], [*or*, the joint and several answers of C. D. and P. D., the defendants (*or*, two of the defendants)], to the bill of complaint of A. B. and S. B., plaintiffs.

No. 177.**Same, where there is only one Defendant to an Original Bill.**

[*Caption.*]

The answer of C. D., defendant, to the bill of complaint of A. B., plaintiff.

No. 178.**Same, by an Infant.**

[*Caption.*]

The answer of C. D., an infant under the age of twenty-one years, by L. M., his guardian, defendant [*or*, one of the defendants], to the bill of complaint of A. B., plaintiff.

No. 179.**Same, by Husband and Wife.**

[*Caption.*]

The joint answer of C. D. and E., his wife, defendants, to the bill of complaint of A. B., the plaintiff.

No. 180.**Another Form by Husband and Wife.**

[*Caption.*]

The joint answer of C. D. and E., his wife, the [*or, two of the*] above-named defendants, to the bill, etc., [*or, if they were married since she was made a defendant, say:*] The joint answer of C. D. and E., his wife, lately and in the bill called C. S., spinster [*or, widow*], to the bill, etc.

In answer to the said bill, we, C. D. and E., his wife, say as follows:

No. 181.**Same, where the Bill Misstates the Names of Defendants.**

[*Caption.*]

The answer of E. D., one of the above-named defendants, and the wife of [the defendant] C. D., to the bill, etc.

In answer to the said bill, I, E. D., answering separately from my husband, in pursuance of an order of this honorable court, dated the — day of — 1894, authorizing me so to do, say, as follows:

No. 182.**Same, by a Lunatic or Idiot, etc.**

[*Caption.*]

The joint answer of C. D., a lunatic [*or, idiot, or, imbecile person*], by T. P., his guardian *ad litem*, and T. P., committee of the said C. D., defendants, to the bill of complaint of A. B., the plaintiff.

No. 183.**Same, by Wife Separately under an Order.**

[*Caption.*]

The joint and several answers of C. D., in the bill called R. D., and of C. E., in the bill called D. E., defendants, to the bill of complaint of A. B., plaintiff.

No. 184.**The First Paragraph of Answer (1).**

[*Caption and commencement.*]

This defendant [*or, these defendants respectively*], now and at all times hereafter saving to himself [*or, themselves*] all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is [*or, these defendants are*] advised it is material or necessary for him [*or, them*] to make answer to, answering, says [*or, severally answering, say*]:

(1) These words, of course, are inserted in all answers after the commencement and before the matters set up in defense of the action.

No. 185.

Same, by a Formal Party who is a Stranger to the Facts.

[*Caption and commencement.*]

This defendant, saving and reserving to himself, etc. [*as in No. 184*], answers and says that he is a stranger to all and singular the matters and things in the said plaintiff's bill of complaint contained, and therefore leaves the plaintiff to make such proof thereof as he shall be able to produce without this, that, etc. [*conclude as in No. 187*].

No. 186.

Same, by an Infant.

[*Caption and commencement.*]

This defendant, answering by his said guardian, says that he is an infant of the age of — years, or thereabouts, and he therefore submits his rights and interests in the matters in question in this cause to the protection of this honorable court; without this, that, etc. [*continue as in No. 187*].

No. 187.**The Conclusion of an Answer (1).**

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said plaintiff's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.

(1) As to the signature to an answer, see Beach's Modern Eq. Prac., Sec. 355; Foster's Fed. Prac., Sec. 151.

No. 188.**Verification of Answer (1).**

State of ———,
County of ———, ss.

C. D. makes solemn oath and says: I am the above-named defendant. So much of the foregoing answer as concerns my own acts and deeds is true to the best of my own knowledge; and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

C. D.

Sworn to before me this ——— day of ———.

[Seal.]

J. N.,

Notary Public, ——— County.

(1) For another form of affidavit see No. 85.

Unless specially waived in the bill, the defendant must answer under oath. See *Fulton Bank vs. Beach*, 2 Paige (N. Y.) 307, Dan. Ch. Pr., 735; 41st and 59th Rules in Equity; Foster's Fed. Prac., Secs. 84, 148, and 151; and Beach's Modern Equity Prac., Sec. 356.

COMMON FORMS USED IN FRAMING ANSWERS.**No. 189.****Accounts—Reference to Book containing them.**

The dealings and transactions in respect of the said trade are entered in a large book, or ledger, kept on the premises at —, and the items in respect thereof are contained in one hundred and sixty-four pages, with double columns, of the said book; and to set out such items in detail would occasion very great expense; but we are willing, if the court shall think proper so to direct, that the plaintiff or his solicitor should inspect the said book, and take extracts therefrom, at all reasonable times of the day.

No. 190.**Accounts Refused, as Being Useless Before Decree.**

And we say and submit that it would only occasion great and useless expense were we in this our answer to set forth any further or fuller account of the rents and profits aforesaid; and that the same ought to be taken, if at all, by and under the directions and decree of this honorable court.

No. 191.**Admission for Purposes of the Suit (1).**

We have no personal knowledge of the fact, but, for the purposes of the suit, we admit that, etc.

or,

And this defendant further answering, says he has been informed and believes it to be true that, etc. *Or,* this defendant admits that, etc.

(1) The averments of a bill in equity may be considered as established whenever the statements in the answer can, by fair interpretation, be construed into an admission of or acquiescence in them. *Surget vs. Byers, Hempst., 715.*

Plaintiff is entitled to a full answer as to every material allegation of his bill. *Price vs. Tyson, 22 Am. Dec., 279.* If the answer is silent as to a fact charged to be, or which may fairly be presumed to be, within the knowledge of defendant, such fact will be deemed to be admitted. *Moore vs. Lockett, 4 Am. Dec., 683.*

No admissions in an answer to a bill in chancery can, under any circumstances, lay a foundation for relief under any specific head of equity unless the ground be substantially set forth in the bill. *Jackson vs. Ashton, 11 Peters, 229.*

If the answer of the defendant admits a fact, but insists on a matter by way of avoidance, the complainant need not prove the fact admitted, but the defendant must prove the matter in avoidance. *Clark vs. White, 12 Peters, 178; affirming, 5 Cranch C. C., 102.*

A denial in an answer in equity that defendant "delivered" an alleged deed goes for nothing if the answer admits facts and circumstances which do in law constitute delivery. *Adams vs. Adams, 21 Wall., 185.*

An evasive answer with admitted facts may entitle complainant to the relief prayed for. *Allen vs. Elder, 2 Am. St. Rep., 63.*

No. 192.

Claims Made by Defendant (1).

I claim to be interested in the matters of this suit, by virtue of, etc.

The short particulars of the mortgage now vested in us, and of our title thereto, are as follows, etc.

We claim to be equitable mortgagees of the hereditaments mentioned in the said bill, together with other hereditaments, under a memorandum in the words and figures following; that is to say, etc.

We claim a lien on the shares of, etc., for so much of the said debt as arises from the unpaid purchase-money of the same shares respectively, and the interest thereof.

(1) After having answered all the allegations of the bill, defendant may go on and state matters in bar or avoidance of plaintiff's claim, by way of further answer. *Price vs. Tyson*, 22 Am. Dec., 279. But if the answer goes out of the bill to state anything not material to the defendant's case, it will be expunged as impertinent. *Price vs. Tyson*, 22 Am. Dec., 279.

No. 193.

Craving Leave for Greater Certainty.

We admit that, etc. [*or*, we believe that, etc.], but, for greater certainty, we crave leave to refer to the said, etc., when produced.

No. 194.

Craving Leave to Refer to Codefendant's Answer.

I know little or nothing respecting the deeds, dealings, and transactions stated in the said amended bill; but I have seen a copy of the answer proposed to be forthwith put into the amended bill by the defendants, J. L. and G. W. F., and I have no doubt but that the statements contained in such answer are correct. However, for my greater certainty, as to the contents of deeds and other written documents, I crave leave to refer to such deeds or documents. Under the circumstances hereinbefore stated, and to avoid expense and prolixity, I abstain from answering, categorically, the interrogatories filed for the examination of the last-named defendants and myself in answer to the amended bill; but if the plaintiffs so desire I am ready and willing to put in a full answer to the said amended bill.

No. 195.

Information and Belief.

I have been informed and believe that, etc.
I believe that, etc.

We have no reason to doubt, and therefore we believe that, etc.

We believe that the statements contained in the paragraphs numbered respectively from 1 to 8, both inclusive, of the plaintiff's bill of complaint are true, except in the particulars or respect hereinafter mentioned; that is to say, etc.

I, this defendant, C. D., say, and we, these other defendants, believe it to be true, that, etc.

We have no personal knowledge of the matters inquired after by the — interrogatory filed in this cause; but we have no reason to doubt, and therefore we believe, that, etc.

No. 196.

Ignorance (1).

I [*or*, we] do not know, and can not set forth as to my [*or*, as to either of our] belief or otherwise, whether or not it is alleged or is the fact that, etc.

(1) An answer stating that the respondent has no knowledge that the facts are as stated in the bill of complaint, without any answer as to his belief concerning it, is deemed sufficient to prevent the bill from being taken as confessed, as it may be if no answer is filed, in case the complainant does not except to the answer for insufficiency within the period prescribed by the 61st Rule in Equity. *Brown vs. Pierce*, 7 Wall., 205. See *Bradford vs. Geiss*, 4 Wash., 513.

No. 197.

Qualified Denial.

Save as herein appears, it is not the fact, etc.

Save as herein appears [*or*, save as by the said schedule appears], I do not know, etc.

No. 198.

Reference to Schedule.

I have in the — schedule hereto annexed, and which I pray may be taken as part of this my answer, set forth, to the best of my knowledge, information, and belief, a description of, etc.

No. 199.**Release, Craving some Benefit as if Plead.**

We submit, and humbly insist, that the said release so executed as aforesaid, and the payment of the said sum of \$——, and the receipt given for the same, is a full discharge; and we claim the same benefit as if we had pleaded the same release. Nevertheless, we are willing and hereby submit to account as this honorable court may think fit.

No. 200.**Settled Accounts—Claim of.**

The account so stated and settled was in fact stated and settled by the said A. B. and myself, as it purports to be, on the day of the date thereof; and I claim the benefit thereof as a settled account.

No. 201.**Submission by Trustees to Act.**

We submit in all things to act as this honorable court shall direct, and we claim to have our costs, charges, and expenses, properly incurred, paid out of the estate of the said testator.

No. 202.**Traverse.**

The said J. S. died on the —— day of ——, and not on the —— day of ——, as in the second paragraph of the said bill erroneously stated; but, save as aforesaid, we do not know, and are unable, as to our belief or otherwise, to set forth whether or not the statements or some or one or which of the statements contained in the paragraphs numbered respectively 1 to 8, both inclusive, of the plaintiff's bill of complaint, are or is true, or which of them are or is or in what respect untrue, or how otherwise.

No. 203.**Trustee—Desire to be Discharged.**

I have never in any manner intermeddled with the said trust estate, nor received any of the rents or profits thereof; and I am very desirous to be discharged from the trusts in the bill mentioned, and I am ready and willing to convey and release the trust premises to such persons, or to do such other acts, as this honorable court shall direct for this purpose, upon being indemnified in so doing, and having my costs and expenses.

No. 204.**Vexatious Suit; Settled Accounts; Claim of Benefit of Defense as if Raised by Plea or Demurrer.**

We submit to the judgment of this honorable court, and humbly insist, that this suit is altogether unnecessary and vexatious; and that even if the plaintiff had been entitled to such relief as is prayed by the said bill, the said relief might have been obtained by proceedings at law; but we say that a large sum of money has been for a long time, and now is, justly due and owing to us from the plaintiff; and that during the whole of the transactions in the said bill mentioned we were in advance with creditors of the plaintiff; and that the plaintiff has repeatedly and partly in the letters hereinbefore set forth acknowledged the accuracy of the accounts rendered by us to him, and has treated the same as being, as in fact they were, settled accounts; and we claim the same benefit from this, our answer, as if we had pleaded the matters herein stated, or any of them, or as if we had demurred to the said bill.

No. 205.**Want of Interest in Plaintiff; Craving some Benefit as if Defense by Demurrer.**

I am advised, and humbly submit, that the plaintiff has not any interest in the estate of the said testator, or in the mat-

ters in question in this suit, nor any such estate or interest in the said testator's estate, or the matters aforesaid, so as to entitle the plaintiff to sustain this suit; and I crave the same benefit from this defense as if I had demurred to the said bill.

No. 206.

Claim of Benefit of same Defense to Amended, as to Original Bill.

We submit that the plaintiff has not by his said amended bill entitled himself to any equitable relief as against us; and we accordingly claim the benefit of the same objections to the said amended bill which are made by our said answer to the said original bill.

No. 207.

Answer of an Executrix Submitting to act under the Indemnity of the Court.

[*Caption, commencement, and first paragraph.*]

This defendant says that she admits that S. W., the testator in the said bill named, was at the time of his death possessed of a considerable personal estate, and particularly of the several sums in the public stocks or funds in the said bill of complaint mentioned; and that the said testator duly made and published his last will and a codicil thereto, of such respective dates, and to such purport or effect as in the said bill in that behalf stated; but, nevertheless, etc.

Believes that the said testator did, soon after making said will and codicil, depart this life without altering or revoking the said will, save by the said codicil, or without altering or revoking the said codicil, leaving this defendant, his widow, and such other persons as in the said bill in that behalf named, him surviving;

Admits that she has duly proved the said will and codicil in the proper court, and has taken upon herself the execution thereof, and has by virtue thereof possessed herself of

as much of the said testator's personal estate and effects as she has been able to do; and this defendant denies that she ever threatened to sell or dispose of the said stocks, funds, and annuities in the said will and bill mentioned, without any regard to the interest of the said complaints in remainder therein, or has made any transfer of the same;

Submits to this honorable court what interest the said complainants are entitled to in the personal estate of the said S. W. by virtue of his said will;

Says she has in a schedule, etc., set forth a true and particular account of all the personal estate to which the said testator was entitled at his death, distinguishing what part thereof has come to her hands, or to the hands of any other person or persons for her use, except such sums as are mentioned in the schedule hereinafter referred to;

Says she has in the second schedule, etc., set forth an account current between her and the estate of the said S. W. and this defendant, and has therein set forth to the best of her knowledge, etc., a full and true account of all sums of money, part of the personal estate of the said testator come to her hands, or to the hands of any person or persons to her use, and of the application thereof;

Says she is ready and willing to account as this honorable court shall direct, for all such parts of the personal estate of the said testator as have been possessed or received by this defendant, having all just and reasonable allowances, made, which she is entitled to as such executrix; and in all other respects this defendant submits to act as the court shall direct, upon being indemnified and paid her costs of this suit; [*conclusion, see No. 187.*]

No. 208.

Answer of the Executors of a Deceased Acting Executor to a Bill of Revivor.

[*Caption, commencement, and first paragraph.*]

These defendants say that they believe it to be true that at or about the time in the said bill stated, R. W., in the said

bill of revivor named, exhibited his original bill of complaint in this honorable court against such parties as defendants thereto, as in the said bill mentioned, thereby stating and praying to the effect in the said bill of revivor set forth, so far as the same is therein set forth, and that in consequence of the death of the said R. W., the said plaintiff, T. W., at or about the time in the said bill of revivor mentioned, exhibited his supplemental bill in this honorable court against such parties defendants thereto as therein mentioned, stating and praying to the effect in the said bill of revivor set forth, so far as the same is therein set forth. And that the said several defendants in the said supplemental bill named afterwards appeared and put in their answers thereto, and that such proceedings have since been had in the said cause as in the said bill of revivor mentioned; but for their greater certainty, nevertheless, these defendants crave leave to refer to the said original and supplemental bills, answers, and other proceedings now remaining filed as of record in this honorable court; and these defendants further severally answering, say they admit it to be true that before any further proceedings were had in the said cause, and at or about the time in the said bill of revivor in that behalf stated, G. R., one of the defendants to the said original and supplemental bills, and one of the executors and trustees under the will of the testator T. W., in the said bill of revivor named, and who has principally acted in the trusts thereof, departed this life, having first duly made and published his last will and testament in writing, of such date as in the said bill of revivor mentioned, and thereof appointed these defendants executors; and these defendants admit that since his death they have duly proved his said will in the proper court, and undertaken the executorship thereof, and are thereby become his legal personal representatives, and that they possessed the said G. R.'s personal estate and effects so far as they have been conveniently able, and these defendants believe (although they do not admit the same) that such personal estate and effects are sufficient to

answer whatever might be due from the said G. R. at the time of his death to the estate of the said testator T. W., if anything were so due; but these defendants not knowing the amount thereof are advised that they can not with safety or propriety admit assets of their said testator to be in their hands sufficient to answer the same, and these defendants say they are ready to account for the said G. R.'s personal estate possessed by them, or for their use, in such manner as the court shall be pleased to direct, if the same should become necessary; and these defendants further severally answering, say they submit that the said suit and proceedings which became abated on the death of the said G. R. may stand and be revived against them as such executors as aforesaid, and be restored to the same plight and condition in which they were at the time of the death of the said G. R.; [*conclusion, see No. 187.*]

No. 209.

Answer of a Widow Electing to take the Bequests Made to Her by a Will, and to Release all Interest in the Devised Estates.

[*Caption, commencement, and first paragraph.*]

This defendant says that she believes it to be true that C. B., deceased, the testator in the said bill of complaint named, being possessed of a large personal estate, did, at or about the time in the said bill of complaint mentioned, duly make and publish his last will and testament in writing, of such purport and effect, and containing such bequest to this defendant as in the said bill of complaint in that behalf set forth, and that the said testator appointed such persons as in the said bill of complaint named executors and executrix of his said will.

And this defendant further answering says that she believes it to be true that the said testator afterwards, and at or about the time in the said bill of complaint mentioned, duly

made and published a codicil to his said will in such words and to such purport and effect as in the said bill of complaint also set forth; but for her greater certainty, nevertheless, as to the said will and codicil, and the respective dates, purports, and contents thereof, this defendant craves leave to refer thereto when produced.

And this defendant further answering says that she admits that the said testator departed this life at or about the time in the said bill of complaint in that behalf mentioned without having in any manner altered or revoked his said will, save by the said codicil, and without having altered or revoked his said codicil; and that the said plaintiffs have since duly proved the said will and codicil in the proper court, and taken upon themselves the executorship thereof.

And this defendant further says that she claims to be entitled to the benefits intended her by the said testator's will, and is ready, upon the same being secured to her according to the directions in the said will contained, to release to J. P., in the said will named, all her right and interest in and to the premises in the said will mentioned, and for that purpose to execute all necessary instruments or deeds; [*conclusion, see No. 187.*]

No. 210.

Answer to a Bill Charging Infringement of a Patent.

See under title "Patents" for form of answers setting up the various defenses to such bill.

EXCEPTIONS.**No. 211.****For Insufficiency (1).****In Equity.**

Between W. W., J. W., and C. L., on behalf of themselves and all other the creditors of J. B., who shall come in and contribute to the expense of this suit, Complainants (2), and J. G. and T. B., Defendants.

An exception taken by the said complainants to the insufficient answer of the said defendants.

For that the said defendants have not, to the best of their knowledge, remembrance, information, and belief, answered and set forth a full, just, and true inventory and account of all and singular the goods and chattels, personal estate, and effects whatsoever which J. B., the younger, in the said bill named, was possessed of, entitled to, or interested in, at the time of the date of the indenture in the said bill mentioned, and all the particulars whereof the same consisted, and the quantities, qualities, full, real, and true values thereof, and of every such particulars; and whether all or some and which of such particulars have not, and when, been possessed or received by, or come to the hands of them, the defendants, or the one, and which of them, or some, and what person or persons, by their or either of their order, or for their or either of their use, and how, and in what manner, and when and where, and by and to whom, and for how much the same and every or any, and what part thereof has been sold and disposed of; and whether any, what parts thereof, and to what value or amount now remain undisposed of, and what is become thereof.

In all which particulars the said complainants except to the answer of the said defendants as evasive, imperfect, and

insufficient, and humbly pray that the said defendants may be compelled to put in full and sufficient answer thereto.

R. X.,
of Counsel for Complainant.

(1) The mode in which a plaintiff avails himself of defects in an answer or plea is by exception. Demurrers apply only to defects in bills. See Beach's Modern Eq. Prac., Sec. 227; see 61st to 65th Rules in Equity.

It is the special office of an exception, not of a demurrer, to raise the question whether an answer to an interrogatory is sufficient. Chicago, St. Louis, etc., R. R. Co. *vs.* Macomb, 2 Fed. Rep., 18. The exceptions should state the charges in the bill, and the interrogatory applicable thereto, to which the answer is addressed, and then the terms of the answer, *verbatim*, so that the court may at once perceive the ground of the exception, and ascertain its insufficiency. Brooks *vs.* Byam, 1 Story 296.

It is not matter of exception to an answer that it is silent concerning an immaterial fact, or one which, if admitted, could not tend to support the complainant's equity. Hardeman *vs.* Harris, 7 How., 726.

Exceptions for impertinence are only allowed when it is apparent that the matter excepted to is not material or relevant, or is stated with needless prolixity. If it may be material, the exception will not be allowed, as that would leave the defendant without remedy; but the allegation excepted to will be allowed to remain in the answer, and the effect thereof, if found to be true, determined on the final hearing. Chapman *vs.* School District No. 1, Deady (U S.) 108.

(2) See note to No. 67.

No. 212.

Another Form of Exceptions to Answer for Insufficiency.

[*Caption.*]

Exceptions taken by the above-named plaintiff to the answer of the defendant [*or, if more than one defendant, of the defendant C. D.*] for insufficiency.

First exception. For that the said defendant has not in and by his said answer, according to the best of his knowledge, remembrance, information, and belief, answered and set forth whether, etc.

Second exception. For that the defendant has not in and by his said answer, in manner aforesaid, answered and set forth whether, etc.

[*And so with respect to the other exceptions, using the words of the interrogatory not answered.*]

In all or some of which particulars the said plaintiff is advised that the said answer of the defendant is evasive and insufficient, and ought to be amended, and humbly prays the same may be amended accordingly.

R. X.,
of Counsel for Plaintiff.

No. 213.

An Exception Taken to the Answer of a Defendant to an Amended Bill.

[*Caption.*]

An exception taken by the said plaintiff to the insufficient answer of the said plaintiff's amended bill of complaint.

For that the said defendant has not, to the best and utmost of his knowledge, remembrance, information, and belief, set forth the documents by which the modus or composition in the said defendant's former answer alleged and insisted upon is made out.

In which particular the said plaintiff excepts to the answer of the said defendant as evasive, imperfect, and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer thereto.

R. X.,
of Counsel for Plaintiff.

See notes to No. 211.

No. 214.

Exceptions for Scandal (1).

[*Caption.*]

Exceptions for scandal taken by the above-named defendant A. B. [*or, plaintiff, etc.*] to the bill of complaint of the

above-named plaintiff [*or*, to the answer of the above-named defendant A. B. to the bill of complaint of the said plaintiff] filed in this cause on the — day of —.

[*Describe the particular passages alleged to be scandalous; as thus:*]

First exception. For that the whole of the paragraph of the said bill [*or*, answer] [*here introduce language to identify the paragraph referred to*] is scandalous.

Second exception. For that the passage commencing with the words "The said person," in the — line, and ending with the words "which he knew," in the — line, of the paragraph of said bill [*or*, answer] [*identify the paragraph*], is scandalous.

In all which particulars this exceptant excepts to the said bill [*or*, answer] as scandalous; and humbly insists that the said scandalous matter be expunged therefrom.

R. X.,

of Counsel for Plaintiff.

(1) Words, however disparaging or abusive, are not scandalous unless they are also "impertinent," or, in other words, irrelevant, and put in for the mere purpose of scandal. *Henry vs. Henry*, 98 Am. Dec., 87.

All scandalous and impertinent matter in an answer to a bill will be expunged. *Sommers vs. Torrey*, 28 Am. Dec., 411. But pertinent matter, though scandalous in itself, is not to be so treated. *Price vs. Tyson*, 22 Am. Dec., 279.

What matters may be struck out of an answer as scandalous, immaterial, etc., see *Griswold vs. Hill*, 1 Paine (U. S.) 390; *Langdon vs. Goddard*, 3 Story (U. S.) 13; *Sargent vs. Larned*, 2 Curt. (U. S.) 340.

No. 215.

Exceptions to Master's Report.

See form No. 280, *post*.

No. 216.

Exceptions to a Libel.

See under title "Admiralty."

DISCLAIMER.**No. 217.****General Form (1).****[Caption.]**

The disclaimer of the defendant, C. D., for the bill of complaint herein.

This defendant, saving and reserving to himself any and all advantages that might be taken by exception to said bill, says that he does not know that he, the said C. D., to his knowledge and belief, ever had, nor did he claim or pretend to have, nor does he now claim any right, title, or interest of, in, or to the estates and premises, situated [*describe them*], in the said bill of complaint set forth, or any part thereof; and this defendant disclaims all right, title, and interest in and to the said estate and premises in [*name situation*], in the said bill of complaint mentioned, and every part thereof; and this defendant prays leave to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

C. D.

Y. & Y.,

Solicitors for C. D.

[*Verification. See No. 188.*]

(1) See Beach's Mod. Eq. Prac., Sec. 283; Foster's Fed. Prac., Sec.

REPLICATION.

No. 218.

General Form (1).

[*Caption.*]

The replication of the above-named plaintiff to the answer of the above-named defendant.

This replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendants, for replication thereunto sayeth that he does and will ever maintain and prove his said bill to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly as in and by his said bill he has already prayed.

X. & X.,

Solicitors for Plaintiff.

(1) See 45th and 66th Rules in Equity; Beach's Modern Equity Prac., Sec. 480 and *ante*; Barton's Suits in Equity, 144 and 145; Story's Equity Pleadings (10th ed.), Sec. 878; 1. Daniels Ch. Pr. (5th ed.), 830 *et seq.*

The answer will be taken as true if no replication is filed (*Trout vs. Emmons* 81 Am. Dec., 326); and no evidence can be given by the complainant to contradict it. *Gallagher. vs. Roberts*, 1 Wash., 320; *Pierce vs. West, Peters C. C.*, 351.

Under Rule No. 66 the plaintiff must reply to the answer of every defendant, when sufficient, without reference to the state of the cause

or of the pleadings in regard to any other defendant. The replication must be a general one, as Rule 45 abolishes special replications. *Coleman vs. Martin*, 6 Blatchf., 291.

Where a plaintiff, instead of filing the general replication, sets down the cause for hearing upon bill and answer, this is an admission that everything well pleaded in the answer is proved. *Parton vs. Prang*, 2 Pat. Off. Gaz., 619.

Where the statute of limitations is relied on as a bar, at law or in equity, and the plaintiff desires to bring himself within its savings, he must set forth the facts specially in his replication, or by an amendment of his bill; or the existence of the exception, not being an issue between the parties, the court can take no notice of any evidence to establish it. *Piatt vs. Vattier*, 9 Peters, 405, and note to Banks' ed.; affirming, 1 McLean, 146; *Taylor vs. Benham*, 5 How., 233. S. P., *Mars-teller vs. McClean*, 7 Cranch, 156.

A departure in pleading is not allowed in equity. If the answer requires a new case to be made, it can not be done in the replication, but must be by an amendment of the bill. *Vattier vs. Hind*, 7 Peters, 252; reversing, 1 McLean, 110.

When a cause is submitted for final decree upon the pleading, and evidence, and it turns out that no replication has been filed to the answer, but that the evidence has been taken as if it had been filed, the court will try the case on its own merits, notwithstanding the want of a replication, or will allow one to be filed *instante*. *Jones vs. Brittan*, 1 Woods, 657.

A decree under Rule 38, dismissing the bill because of failure to reply to a plea, or set it down for argument, is not a bar to a subsequent action. *Keller vs. Stolsenback*, 20 Fed. Rep., 47.

NOTICES, MOTIONS, ORDERS, DECREES, Etc.

No. 219.

Subpœna in Chancery.

For form of subpœna, see No. 33.

No. 220.

Motion for Additional Security for Costs.

[*Caption.*]

Now comes the defendant and moves the court for an order requiring the plaintiff to file a bond as security for costs herein.

Y. & Y.,
Solicitors for Defendant.

No. 221.

Cost Bond.

For form of bond, see No. 36.

No. 222.

Appearance.

For form for appearance, consult Nos. 11, 12, and 13. See also 17th Rule in Equity.

No. 223.

Order to Take Bill Pro Confesso (1).

[*Caption.*]

The subpœna in the above entitled cause having been returned, which return has been filed, and it appearing there-

from that the said subpœna was duly served on C. D., the defendant herein, and no appearance having been entered on the part of said defendant, or demurrer, or plea, or answer filed, although such appearance should have been entered or pleading filed on or before the — day of —; therefore, on motion of R. X., solicitor for the plaintiff, it is ordered and decreed that the bill herein be taken *pro confesso* as to said defendant.

Dated —.

(1) See 18th Rule in Equity.

No. 224.

Consent to Take Bill Pro Confesso.

[*Caption.*]

Whereas the bill in equity in the above entitled cause was filed in this court on the — day of —, and a subpœna issued and duly served on me in this cause as required by law [*or*, I hereby waive service of subpœna and enter my appearance herein], and I do not desire to defend said action; therefore I hereby consent that the said bill be taken *pro confesso*, and I hereby admit [*state admission*] as charged in said bill [and I hereby consent that said injunction may issue in said action out of this court as prayed for in said bill without any further proof being made or given in said action], and the plaintiff may attach this stipulation and confession to the said bill, and the same to be binding and conclusive upon me, this defendant.

C. D.

No. 225.

Decree Pro Confesso (1).

[*Caption.*]

It appearing to the court that the bill in equity in the above entitled cause was filed in this court on the — day of —, 1894, and that a subpœna was issued and duly served

on the defendant herein ; that no appearance has been entered on the part of the defendant, or demurrer, or plea or answer filed, and that an order taking the said bill *pro confesso* was duly entered on the — day of — in the order-book, and that no proceedings have been had or taken by said defendant since such order was entered ; now, therefore, more than thirty days after entering said order as aforesaid, to wit, on the — day of —, it is hereby ordered, adjudged, and decreed [*insert the finding of the court.*]

(1) A decree taken *pro confesso* does not become absolute until the next term of court. See 19th Rule in Equity.

No. 226.

Decree Pro Confesso Sustaining Patent.

See under title "Patents."

No. 227.

Order for Attachment to Compel Answer (1).

[*Caption.*]

The subpœna issued in the above cause having been returned, which return has been filed, and it appearing therefrom that the said subpœna was duly served on C. D., the defendant herein, and no appearance having been entered on the part of the said defendant, therefore, on motion of R. X., solicitor for the plaintiff, it is ordered and decreed that an attachment issue against the said C. D.

(1) See 18th Rule in Equity.

No. 228.

Attachment to Compel Answer (1).

The President of the United States of America to the Marshal of the — District of —, Greeting :

You are hereby commanded that you attach C. D., if he may be found in your district, and bring him forthwith [*or,*

on the —— day of ——, etc.] personally before the judge of the circuit court of the United States for the —— district of ——, in the —— circuit, held at [*name place of holding court*], in the city of ——, in the said district, to answer for certain contempts in not obeying our writ of subpœna to him directed, and on him duly served, commanding him to appear before the said circuit court, in equity, on the [*as in subpœna*], to answer a bill of complaint exhibited against him in the said court by A. B., and further to perform and abide such order as our said court shall make in this behalf; and you are further commanded to detain him in your custody until he shall be discharged by the said court.

And have you then and there this writ.

Add teste, as in No. 31.

(1) See 18th Rule in Equity.

No. 229.

Injunction Pendente Lite.

For forms of Notice, Motion, Orders, etc., *in re* Injunction *pendente lite*, see under title "Patents," "Preliminary Injunction."

No. 230.

Writs in Equity.

See under "Miscellaneous Writs at Law and in Equity," page 21, *et seq.*

No. 231.

Præcipe for Copy.

[*Caption.*]

B. R., Clerk of said Court.

Please prepare a certified copy of the bill of complaint [*or, answer, or other paper, as may be, naming it*] herein.

X. & Y.,

Attorneys for ——.

No. 232.**Order to Stand Over to Add New Parties.**

[Caption.]

This cause coming on to be heard this — day of —, and counsel for the respective parties having been heard, and it appearing to the court that E. F. and G. H. are necessary parties to this cause, it is ordered that this cause do stand over, to the end that the plaintiff may make the said E. F. and G. H. parties thereto, either by amendment or supplemental bill, as he may be advised.

No. 233.**Order to Stand Over to Supply Proofs.**

[Caption.]

This cause coming on to be heard this — day of —, and counsel for the respective parties having been heard, and it appearing to the court that the plaintiff has omitted to introduce proof of [*here state the substance of what is omitted*], it is ordered that this cause stand over, to the end that the plaintiff may examine witnesses to prove [*state what plaintiff has leave to prove*].

No. 234.**Motion for Leave to File an Amendment.**

[Caption.]

Now comes the plaintiff [*or, defendant*] herein, and begs leave of the court to file an amended bill [*or, answer, or, etc.*], hereto attached.

X. & Y.,

Solicitors for —.

No. 235.**Amendment to a Bill (1).**

[Caption.]

And now comes the plaintiff, and, with leave of the court first had and obtained, amends his bill of complaint herein, as follows:

First. In the sixth line of the second paragraph of said bill, after the word "thereto," insert [*here set forth what is to be inserted*].

Second. At the end of the fifth paragraph add the following: [*here insert the additional matter*].

Third. Erase the words [*set them forth*], in the third line of the tenth paragraph [*continue in like manner to set forth the new matter*].

R. X.,

Solicitor for Plaintiff.

(1) The amendment should not be made by interlineations and erasures in the original bill, but by filing the same on separate paper; and the amended bill should state no more of the original bill than is necessary to make intelligible where the new matter is to be inserted. See also 28th, 29th, 30th, and 60th Rules in Equity.

No. 236.

Amendment to Answer.

Form No. 235 will furnish sufficient guide for an amendment to an answer. The necessary alterations can readily be made.

See also 60th Rule in Equity.

No. 237.

Petition by Infant for Appointment of a Guardian ad Litem.

[*Caption and address.*]

The petition of C. D., of —, the [*or, a*] defendant in this suit, respectfully shows that your petitioner is an infant over the age of fourteen years, to wit, of the age of fifteen years and upwards; that the bill in this cause was filed against your petitioner [*and others*] for the foreclosure of a mortgage alleged to have been executed by the father of your petitioner (who is now deceased) in his lifetime, to the plaintiff, and praying for a sale of the mortgaged premises. And your

petitioner further shows that she claims an interest in the said mortgaged premises as heir at law of her father; and that she has been served with a subpœna in said cause, requiring her to appear and answer the said bill, returnable on the — day of — instant.

Your petitioner therefore prays that L. M., a solicitor of this court, residing in —, may be appointed the guardian *ad litem* of your petitioner, to appear and defend this suit on her behalf. And your petitioner will ever pray, etc.

No. 238.

Petition by Plaintiff for Appointment of Guardian ad Litem for an Infant Defendant.

[*Commence as in preceding form.*]

The petition of A. B., the plaintiff in this suit, respectfully shows that the bill in this suit was filed against the defendant to foreclose a mortgage executed by the father of said defendant (who is now deceased) in his lifetime, to your petitioner, and praying for a sale of the mortgaged premises; and that the said defendant claims an interest in the said premises as heir at law of her father. And your petitioner further shows that the said C. D. resides in —, and is, as he is informed and believes, an infant over the age of fourteen years, to wit, of the age of fifteen years and upwards. And that on the — day of —, a subpœna in this cause was duly served on the said C. D., requiring her to appear to and answer the said bill, returnable on the — day of — last. And your petitioner further shows that although more than — days have elapsed since the appearance day mentioned in said subpœna, no guardian *ad litem* has as yet been appointed for such infant, or applied for by her or any person on her behalf, to the knowledge or belief of your petitioner.

Your petitioner therefore prays that L. M., the register of this court, may be appointed guardian *ad litem* of such infant defendant, to appear and defend this suit in her behalf.

And your petitioner, etc.

No. 239.**Affidavit to Obtain a Ne Exeat.**[*Caption.*]

State of —,

County of —, ss.

I, W. B., one of the above-named plaintiffs, being duly sworn, deposes and says that the above defendant is actually and justly indebted to the said plaintiffs in the sum of — dollars, for [*here state the ground and circumstances of indebtedment*]; for the recovery of which the said plaintiffs did, on the — day of —, file their bill of complaint herein against the said defendant; to which said bill the said defendant has not yet answered; and, being so indebted, the said defendant has lately declared in the presence of each of the plaintiffs, and informed them, and this deponent verily believes, that he will without delay leave the United States and go to live and reside in parts beyond the seas without these United States and out of the jurisdiction of this court. And this deponent has no doubt, but verily believes, that if the said defendant should be allowed to depart out of this district, the plaintiffs' debt will either be entirely lost to them, or the recovery thereof greatly endangered.

Sworn, etc.

W. B.

[*Certificate of allowance.*]

—

No. 240.**Order for Writ of Ne Exeat to Issue.**

Upon motion, etc., and upon reading an affidavit of, etc., filed, etc. [*if before appearance*, and the clerk's certificate of the filing of the plaintiff's bill in this cause on the — day of —]; and the plaintiff by his counsel undertaking, etc. [*as to damages*]: This court orders that a writ [*or, one more writ, or, writs*] of *ne exeat republica* do issue against the said defendant A. B., until this court make another order to the contrary; and the said writ [*or, writs*] is [*or, are*] to be marked for security in the sum of — dollars.

No. 241.**Writ of Ne Exeat.**

For form of Writ, see No. 66.

No. 242.**Bond to Sheriff upon a Ne Exeat.**

Know all men by these presents that we, C. D., of the city of —, and E. F. and G. H., of the same place, are held and firmly bound unto H. C., United States Marshal for the — district of —, in the penal sum of — dollars, to be paid to the said H. C., United States Marshal for the — district of —, as aforesaid, or his assigns. For which payment well and truly to be made we bind ourselves jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the — day of —, 18—.

Whereas, the above-named C. D. has been arrested upon a writ of *ne exeat* issuing out of and under the seal of the circuit court of the United States for the — district of —, in a certain cause therein pending, wherein A. B. is plaintiff, and the said C. D. is defendant, and is now in custody of the said H. C., marshal as aforesaid, by virtue thereof:

Now, the condition of this obligation is such, that if the said C. D. shall not depart from or leave this — district of — without the permission of the said court, then this obligation to be void; otherwise to be and remain in full force and virtue.

C. D. [*Seal.*]

E. F. [*Seal.*]

G. H. [*Seal.*]

[*For acknowledgment and justification of sureties see No. 36.*]

No. 243.**Notice of Motion for the Discharge of Ne Exeat.**

[*Caption.*]

Take notice that this honorable court will be moved before [*name judge and court*], on —, the — day of — instant [*or, next*], at — o'clock in the —noon, on the part of the defendant, C. D., that the writ of *ne exeat republica* issued against him pursuant to the order dated the — day of —, 1894, and the said order, may be discharged with costs, including the costs of this application; and that the plaintiff may be ordered to pay such costs to the said defendant,—*If so*; and that the bond given by the said defendant to the — of —, pursuant to the said order and writ, may be delivered up to be canceled. And that an inquiry may be made what damages have been sustained by the said defendant by reason of the said order having been made. And that the plaintiff may be ordered, pursuant to his undertaking, contained in the said order, to pay to the said defendant, within (one month) after the date of the master's certificate of the result of such inquiry, what shall be thereby certified in respect of such damages.

No. 244.**Motion to Assign Time within which Parties shall take Evidence.**

[*Caption.*]

Now comes the plaintiff [*or, defendant*] herein, and moves the court to assign a time within which the parties respectively shall take their evidence. X. & Y.,

Solicitors for —.

No. 245.**An Order Assigning Time within which to take Testimony.**

[*Caption.*]

The above-named cause coming on this — day of —, to be heard on motion of plaintiff [*or, defendant*] for an

order to assign time within which the parties respectively shall take their evidence, and counsel being heard for the respective parties, it is hereby ordered that the plaintiff shall have until the —— day of ——, 1894, within which to take his evidence in chief, and that the defendant thereafter shall have until the —— day of ——, within which to take his evidence, and that the plaintiff thereafter shall have until the —— day of ——, in which to take his evidence in rebuttal.

No. 246.

Letters Rogatory (1).

The United States of America,

—— District of ——, ss.

The President of the United States to any Judge or Tribunal having jurisdiction of civil causes at Havana, Greeting:

Whereas a certain suit is pending before us in which L. M. and J. T. are the claimants of the schooner P. and cargo, and the United States of America are the defendants; and it has been suggested to us that there are witnesses residing within your jurisdiction without whose testimony justice can not completely be done between the said parties:

We therefore request you that in furtherance of justice you will, by the proper and usual process of your court, cause such witness or witnesses as shall be named or pointed out to you by the said parties, or either of them, to appear before you, or some competent person by you for that purpose to be appointed and authorized, at a precise time and place by you to be fixed, and there to answer on their oaths and affirmations to the several interrogatories hereunto annexed; and that you will cause their depositions to be committed to writing and returned to us under cover, duly closed and sealed up together with these presents; and we shall be ready and willing to do the same for you in a similar case when required.

[*Add teste. See Nos. 30 and 31.*]

(1) See R. S., Secs. 875, 4071, 4074; Desty's Fed. Proc., Sec. 394.

No. 247.**Letters Rogatory (1).**

The United States of America,

— District of —, ss.

The President of the United States of America to the President of the Court at —, in the Kingdom of —, Greeting:

Whereas a certain suit is pending in our circuit court for the — district of —, in which A. B., as administrator of the estate of A. N., deceased, is plaintiff, and the C. D. Railroad Company is defendant, and it has been suggested to us that justice can not completely be done between the said parties without the testimony of E. F., G. H., and I. J., all of whom reside at —, within your jurisdiction:

We therefore request you that in furtherance of justice you will, by the proper and usual process of your court, cause said E. F., G. H., and I. J. to appear before you, or some competent person by you for that purpose to be appointed and authorized, at a precise time and place by you to be fixed, then and there to make answer on their oaths and affirmations to the several interrogatories hereunto annexed; and that you will cause their depositions to be committed to writing and to be returned to us under cover, addressed to the clerk of the circuit court of the United States for the — district of —, at the city of —, and state of —, in the United States of America, duly closed and sealed up together with these presents; and we shall be ready and willing to do the same for you in a similar case when required.

[*Add teste. See No. 31.*]

(1) See note to No. 246.

No. 248.**Order for Dedimus Potestatem.**

[*Caption.*]

On reading and filing affidavit of plaintiff's attorney and notice of motion, with proof of due service thereof on attor-

neys for the defendant, A. R., who only has appeared herein, J. H., Esq., appearing for the plaintiff, and R. Y., Esq., for the defendant, A. R.:

It is on motion of J. H., Esq., United States attorney, ordered that a *dedimus potestatem* be issued in this cause out of this court, directed to the United States consul, and to such deputy or representative of said consul as may be authorized by him to act in his place and stead, at the following named places, respectively, viz.: [*name them as*] To E. P., United States consul at Aix-la-Chapelle (Aachen), Germany, and his deputy or representative; to examine the following named persons under oath as witnesses herein, viz. [*name them*].

It is further ordered that the examination above provided for shall take place during the months of — and —, and at such times within said months as is hereinafter designated.

It is further ordered that either party to this action shall have liberty to examine not only the witnesses herein named, but any other witnesses that either party may desire to examine at the aforesaid places of [*name them*], before either of the persons herein authorized to take testimony; provided, however, that the names of said witnesses and their places of residence shall be given to the attorney of the opposite side in —, before the — day of —, or such notice be given in Europe to the opposite counsel acting there for either party to this action in either of the aforesaid places of [*name them*], where such other witnesses are to be examined, two days before such examination.

It is further ordered that prior to —, the attorneys for the respective parties shall give notice in —, each to the other, of the names and European address for the last week in —, of the counsel for the respective parties, who are to take testimony under this commission.

It is further ordered that the examination of witnesses shall be had at the following places in the following order,

and not otherwise, viz.: First at —, next at —, next at —, etc.; that the examination shall commence at — on the — day of —, or within two days thereafter; and that no examination shall be made of witnesses at any place after the examination has been finished at that place, or the examination of witnesses commenced at another place.

It is further ordered that the counsel for the plaintiff shall have with him, at any and all said examinations of said witnesses, or either of them, all the original invoices mentioned in the declaration herein, or copies or duplicates thereof, and which are in the possession of the plaintiff, and that counsel for defendant shall have full and free inspection thereof, and liberty to take copies of the same.

It is further ordered that all directions herein contained as to time, place, order, and manner of examination of said witnesses may be changed or modified by the written consent of the counsel for the respective parties in Europe or in —.

It is further ordered that the examination of all witnesses under this commission shall be oral, or taken by question and answer in the usual manner of taking oral depositions by examination, cross-examination, and redirect examination; that the testimony given under such examination shall be reduced to writing, signed by the witnesses and certified by the commissioners respectively, and by them transmitted by mail to the clerk of this court at the city of —, unless otherwise mutually agreed upon by said counsel for both parties.

It is further ordered that all testimony taken under the commission provided for herein shall be taken subject to all legal objections at the trial of this action. G. W.,

Judge of the District [*or*, Circuit] Court
for the — District of —.

No. 249.**Order to Show Cause why the Time for Taking Testimony should not be Extended (1).***[Caption.]*

On reading the affidavits of S. D. and E. M., and on motion of R. Y., solicitor for defendant in the above-entitled suit, it is hereby ordered that copies of the same, with a copy of this order, be served on the solicitor for the plaintiff in the above suit on or before the —— day of ——, 1894, and that the said plaintiff show cause, if any he have, at ——, in the city of ——, on the —— day of ——, 1894, at 10 o'clock, a.m., why the time allowed for taking testimony on behalf of the defendant in the said cause should not be extended to and including the —— day of ——, 1894.

(1) See 69th Rule in Equity.

No. 250.**Order Extending the Time for Taking Testimony.***[Caption.]*

On reading and filing the defendant's order to show cause, and the affidavits of S. D. and E. M. thereto annexed, and after hearing R. X., Esq., for the plaintiff, and R. Y., Esq., for the defendant, it is ordered that the time allowed for taking testimony on behalf of the defendant in the above-entitled cause, be extended to and including the —— day of ——, 1894, and that the plaintiff have —— days thereafter within which to take testimony in rebuttal.

No. 251.**Notice of Motion for Appointment of Special Examiner (1).***[Caption.]*

R. Y.,

Solicitor for Defendant.

Please take notice that at a stated [*or, special*] term of this court, to be held on the —— day of ——, 1894, at ——

[*place of holding court*], the plaintiff in this cause will move at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order that J. N., Esq., of —, be appointed special examiner herein, under the 67th Rule as amended, to take the deposition of witnesses in behalf of said plaintiff.

X. & X.,

Dated —.

Solicitors for Plaintiff.

Service accepted, etc. [*as in No. 14*].

(1) See 67th Rule in Equity, as amended May 3, 1892. Notaries public are authorized by statute to take depositions to be used in the courts of the United States. See 19 Stat. at L., 206; Desty's Fed. Proc., Secs. 381 and 381a; but there is some doubt whether a notary is authorized to take depositions under the 67th Rule in Equity unless by consent of counsel or appointment of court he is made a special examiner.

No. 252.

Order Appointing Special Examiner.

[*Caption.*]

Upon reading and filing notice of motion, with admission of service, and on motion of R. X., solicitor for plaintiff [*or*, defendant], no one opposing, it is ordered that J. N., Esq., of —, be and is hereby appointed special examiner, under the 67th Rule as amended, to take the depositions of witnesses on the part of the plaintiff [*or*, defendant] in this cause.

No. 253.

Notice of Oral Examination (1).

[*Caption.*]

Y. & Y.,

Solicitors for Defendant.

Please take notice that the plaintiff in the above cause desires the evidence to be adduced therein to be taken

orally under the 67th Rule in Equity, as amended; and you will further take notice that by an order made in said cause by J. N., Esq., one of the examiners of said court, the examination of witnesses on the part of the said plaintiff will take place before said examiner at —, in the city of —, on the — day of —, 1894, at 10 o'clock a. m., and proceed as the said examiner may direct.

X. & X.,
Solicitors for Plaintiff.

Dated —.

Service accepted, etc. [*as in No. 14*].

(1) See 67th Rule in Equity, as amended.

No. 254.

Notice of Deposition under United States Revised Statutes (1).

[*Caption.*]

Y. & Y.,

Solicitors for Defendant.

Please take notice that the plaintiff herein will take the testimony of E. F., G. H. and I. J., all of whom reside at the city of —, and state of —, and others, each and all of whom reside more than one hundred (100) miles from the place of trial herein, and more than one hundred (100) miles from any place at which a circuit court of the United States for the — district of — is appointed to be held by law, at the final hearing for use on behalf of the plaintiff, before J. N., Esq., a notary public in and for the county of —, who is not of counsel nor interested in this cause, at the office of X. & X., at No. — —, street, in the city of —, and state of —, on the — day of —, at 11 o'clock a. m., and thereafter from day to day as the taking of the depositions may be adjourned; and such testimony

will be so taken in accordance with the provisions of sections 863, 864, and 865 of the Revised Statutes of the United States and the equity rules.

X. & X.,
Solicitors for Plaintiff,
No — — — St., — —,

Dated at — —.

(1) See R. S., Secs. 863, 864, and 865; Desty's Fed. Proc., Secs. 382, 383, and 384, and cases there cited; 70th Rule in Equity; see also Foster's Fed. Prac., Sec. 280.

No. 255.

Notice to Take Depositions under 67th Rule in Equity.

[*Caption.*]

The plaintiff [*or*, defendant] will take notice that the defendant [*or*, plaintiff] will examine witnesses in the above entitled cause, under the 67th Rule in Equity, as amended (1), before J. W., Esq., [*official title*, as special examiner, *or as may be*], at his office at — — street, in — —, on — —, the — — day of — —, 18—, beginning said examination at 10 o'clock a. m. of said day, and continuing from day to day until completed.

R. X.,

Solicitor for Plaintiff [*or*, Defendant].

Service accepted this — — day of — —, 1894.

R. Y.,

Solicitor for Defendant [*or*, Plaintiff].

(1) Amendments of 1861 and 1891, and May 3, 1892. As to the regularity of proceedings before an examiner, see *Fisher vs. Hayes*, 6 Fed. Rep., 86. See note to No. 251.

No. 256.

Affidavit of Service of Notice (1).

State of — —,
County of — —, ss.

On the — — day of — —, 1894, I served the within notice on R. Y. by handing a copy of the same to him [*or say*, by

leaving a copy of the same at his residence *or*, place of business, *as may be*], at No. —, — street, in the city of —.

S. D.

Subscribed and sworn to before me this — day of —, 1894.

J. N.,

[*Seal.*]

[*Official Title.*]

(1) This affidavit may be indorsed on any notice, but it is not often necessary to make affidavit of service, as counsel usually will admit service of notice.

No. 257.

Subpœna to Testify before an Examiner.

For form of Subpœna, see No. 39.

No. 258.

Subpœna Duces Tecum.

For form of Subpœna Duces Tecum, see No. 40.

No. 259.

Commencement for Depositions (1).

Circuit Court of the United States, for the
— District of —.

A. B., Plaintiff,	}	In Equity. No. —.
<i>vs.</i>		
C. D., Defendant.		

Examination of witnesses, beginning —, 1894, at No. — street, in —, before J. N. [*official title, as*, notary public in and for — county, state of —, special examiner by agreement of counsel (2)] on behalf of the plaintiff [*or*, defendant], under the 67th Rule of Equity, as amended, pursuant to notice.

Present R. X., Esq., counsel for the plaintiff, and R. Y., Esq., counsel for the defendant.

By request of parties, it is ordered that these depositions be taken by question and answer.

G. H. a witness produced on behalf of the —, being first duly sworn, deposes and says, in answer to interrogatories propounded to him by Mr. X., of counsel for the —, as follows:

Question 1. State your name, age, residence, and occupation.

Answer, etc.

(1) Consult Form No. 24.

(2) See note to No. 251.

No. 260.

Certificate at Close of Depositions (1).

[The United States of America, for the
— District of —,] *or*,

State of —,
County of —, ss.

I, J. N., [*official title*] hereby certify that the above witnesses, G. H., S. L., and A. H., were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth; that their depositions were reduced to writing by Miss A. M. in the presence of the said witnesses respectively, and when completed read over to said witnesses respectively, and subscribed by them in my presence and in the presence of such of the parties and counsel as attended; that said depositions were taken pursuant to the annexed notice, at the office of J. N., at —, beginning on the — day of —, 1894, and continuing from day to day as set forth; that the parties were represented at the taking of said deposition by their respective counsel as set forth; that the several exhibits recited were offered in evidence and marked as specially noted in the foregoing depositions; and that I am not counsel or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand and official seal, this — day of —, 1894.

J. N.,

[*Official title.*]

FEES.

Notary, — folios at 20c. \$—; paid by —.

Witnesses, —.

—.

Mileage, —; paid by—.

(1) Consult Form No. 25.

No. 261.

Transmission of Depositions.

For form, see No. 26.

No. 262.

Decretal Order for Sale.

An order of “sale as in suits at law” is often inserted in a decree. For form of Order for Sale, consult No. 44.

No. 263.

Marshal's Appraisement of Real Estate.

For form, see No. 45.

No. 264.

Report of the Marshal of Sale.

For form, see No. 46.

No. 265.

Notice of Application for Trial.

[*Caption.*]

To Y. & Y.,

Attorneys for Defendant [*or*, Plaintiff].

Please take notice that on the — day of —, 1894, we will apply to the clerk of said court to have the above cause

noted for trial at the April [*or as may be*] Term thereof,
1894. X. & X.,

Attorneys for Plaintiff [*or*, Defendant].

Service of the above notice is hereby acknowledged this
— day of —, 1894. Y. & Y.,

Attorneys for Defendant [*or*, Plaintiff].

No. 266.

Notice of Final Hearing.

[*Caption.*]

Y. & Y.,

Solicitors for Defendant.

Please take notice that under the order entered in the above-entitled cause on the — day of —, 1894, said cause will be brought on for final hearing upon the pleadings, proofs, and proceedings herein, before the Judges of this honorable court, at a stated term thereof to be held at —, in the city of —, on the — day of — next, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

X. & X.,

Dated —.

Solicitors for Plaintiff.

Service, etc. [*as in No. 265*].

No. 267.

Stipulation to Submit Cause on Printed Briefs.

[*Caption.*]

It is hereby stipulated and agreed that this cause be submitted to the court on printed arguments; the plaintiff's counsel to serve his argument within — days, and the defendant's counsel to answer the same within — days thereafter, and the plaintiff's counsel to reply within — days after the defendant's counsel's arguments shall have been served.

Dated this — day of —, at —.

R. X.,

Solicitor for Plaintiff.

R. Y.,

Solicitor for Defendant.

No. 268.**Final Decree Dismissing Bill.**[*Caption.*]

This cause having come on to be heard this — day of —, upon pleadings and proofs, and Mr. R. X. having been heard on the part of the plaintiff, and Mr. R. Y. on the part of the defendant, and due deliberation having been had, it is ordered, adjudged, and decreed that the said bill of complaint herein be and the same is hereby dismissed, with costs to the defendant to be taxed.

No. 269.**Decree of Dismissal of Bill (another form).**

This cause coming on, etc., this court doth order that the plaintiff's bill do stand dismissed out of this court [*if there are other defendants who do not appear, or if dismissed against one of several defendants, as against the defendant C. D.*], with costs to be paid by the plaintiff A. B., to the said defendant C. D., and to be taxed by the, etc., [*in case the parties differ*].

No. 270.**Decree of Dismissal Without Prejudice, Stating Reasons.**

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the court that the plaintiff is entitled to no specific lien or security upon either of the vessels mentioned in the plaintiff's bill, and has no equity to be relieved in respect thereof, and that his bill be dismissed, with costs to the defendants, without prejudice to his right to come in and receive a dividend of the said R.'s estate in common with the other creditors of the said estate.

No. 271.**Decree Rescinding Contract for Fraud.**

[*Caption.*]

This cause came on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it is declared by the court that the contract of sale, and the conveyance of the premises, and the notes of the said O. D. thereupon, as set forth in the bill, were made by and between the said O. D. and the said J. T. and other parties, upon material representations and mutual mistakes as to the quality of timber on the premises so sold, and therefore ought to be set aside, and held null and void; and the said O. D. ought to be repaid the amount of the said purchase-money actually paid by him thereupon and therefor by the said J. T., who received the notes for the same, and in his aid and for his relief, by such of the other parties, defendants to the bill respectively, for whom the said J. T. acted as agent, or who with a full knowledge of, and assent to, the said contract of sale and misrepresentations and mistakes, have received any of the said notes, or any part of the purchase-money paid thereon by the said O. D.; but not for the part thereof received by any other party. And thereupon, in furtherance of the declarations aforesaid, it is further ordered, adjudged, and decreed that the same contract of sale, and conveyance, and notes, be, and hereby are, annulled, rescinded, and declared utterly void and of no effect.

And the said O. D. is further ordered, adjudged, and decreed to convey the premises by such due and reasonable conveyance or conveyances as shall be devised and reported by a master, when and so soon as the purchase-money actually paid by him shall be repaid as hereinafter mentioned.

And it is further ordered, adjudged, and decreed by the court that the said J. T. be, and hereby is, held directly liable to the plaintiff for the whole amount of moneys paid as aforesaid; deducting, however, therefrom the proceeds of timber sold, as well as the value of timber taken from said lands by

and under the authority of the said O. D., and remaining unsold, and making all due allowances for all proper charges and expenses incurred in regard to said timber, and for taxes paid on the said lands.

And it is further ordered, adjudged, and decreed that such of the other parties, defendants to said bill, as with a full knowledge of the premises, or for whom the said J. T. acted as agent, or who assented to the said contract of sale and conveyance, with a full knowledge of the premises, shall be, and hereby are, decreed to be liable in aid and relief of the said J. T. to pay and deliver back to the said O. D. such parts or portions of the purchase-money paid by the said O. D. for the said lands as have been received by them respectively in the premises, or on the notes of the said O. D. so received by them, but no one of them to be liable for any purchase-money or notes received by any of the other parties defendants.

And it is further ordered, adjudged, and decreed by the court that no damage or interest on the aforesaid moneys be allowed, except the proceeds of such timber, sold and unsold, as aforesaid, shall furnish a fund therefor; and in that event, interest upon said purchase-money to be added thereto as an offset *pro tanto* to the excess of said proceeds, not exceeding the amount of such excess.

And it is further ordered, adjudged, and decreed by the court that it be referred to S. L., Esquire, as master, to ascertain the amount due to the plaintiff on the basis of this decree, and also the particular notes and sums received by each of said defendants of said purchase-money, so paid and secured as aforesaid, and to report the same to the court.

And it is further ordered, adjudged, and decreed by the court that the master be clothed with full power to examine, as well the parties as any other witnesses, orally or upon written interrogatories, under oath, in the premises, and to require the production of all vouchers, papers, and other documents pertinent and proper in the premises; and that

he state a full account in the premises upon the basis of this decree. And that he be clothed with all the usual powers and authorities of a master in all things touching the premises.

And all further orders and decrees are reserved for the consideration of the court.

No. 272.

Decree for Specific Performance of Agreement for Policy of Insurance.

[*Caption.*]

This case was thence continued from term to term until this present term; when, to wit, on the —— day of ——, the same came on to be heard on the bill and answer and proofs in the case, and was argued by counsel.

And it appearing to the court that the plaintiffs, through their agent, made a proposal in writing for insurance which contained all the necessary terms of a valid contract for a policy, and that the defendants accepted this proposal.

That this acceptance made a legal contract between the parties, which it is the duty of the court to order to be specifically performed.

That as it is admitted that the plaintiffs would have a good cause for action at law upon a policy, if issued in pursuance of the contract, there should be decreed, to them in this suit what they would be entitled to recover if a policy were issued and that which was agreed to be done were actually done:—

Thereupon it is ordered, adjudged, and decreed that the said agreement so entered into between the said plaintiffs and the said defendants set forth in the bill of complaint, and proven in this cause, be specifically performed.

It is further ordered, adjudged, and decreed, that the plaintiffs recover of the said defendants the sum of eight thousand seven hundred and two dollars and forty-three cents, as and for their damage in this behalf sustained, a deduction having

been first made from the sum agreed to be issued for premium and salvage, and also the sum of two hundred and four dollars and twenty-four cents, for their cost in this behalf sustained

No. 273.

Entry Reversing Decree.

[*Caption.*]

The defendant C. D., heretofore appealed to the supreme court of the United States from certain parts of the final decree made by this court in this cause on the — day of —, and the supreme court of the United States having at the October term 1894, duly heard the said appeal upon the transcript of the record, and having thereupon ordered, adjudged, and decreed that so much of the said decree of this court as allows the said plaintiff costs and the sum of — dollars for interest on the damages found for him, was erroneous and should be reversed and annulled, and that the residue of the said decree of this court should be affirmed; and the said supreme court having remanded this cause to this court with instructions that such proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding, which said decree, order, and instructions appear to this court by the mandate of the said supreme court:

Now, therefore, on filing the said mandate ordered [*here set forth what is required by the mandate*].

No. 274.

Decretal Order Appointing Special Master.

[*Caption.*]

This cause came on to be heard this — day of —, upon the pleadings and proofs, and was argued by counsel for the respective parties, and the court having considered the same, and being of the opinion [*here set forth the facts found by the court*].

And it is further ordered, adjudged, and decreed that the cause be referred to C. G., Esq., as special master, to ascertain and report [*here set forth the matters concerning which the master is desired to report*].

And upon the coming in and confirmation of the said report that said plaintiff have a decree and execution for the amount found due him and also for the costs in this suit to be taxed.

No. 275.

Oath of Special Master.

[*Caption.*]

I, C. G., having heretofore been appointed Special Master in the above-entitled cause, do solemnly swear that I will faithfully and impartially perform my duties as such master, agreeable to the order of the court, to the best of my ability and understanding. So help me God. C. G.

Sworn to before me and signed in my presence this — day of —, 1894. B. R.,

Clerk of Circuit Court of the United States
[*Seal.*] for the — district of —.

No. 276.

General Notice for Proceedings Before Master.

To X. Y.,

Counsel for Plaintiff [*or*, Defendant].

[*Caption.*]

By virtue of an order of reference in the above-stated case I do appoint to consider the matters thereby to me referred Saturday, the — day of —, at 10 o'clock a. m., at my office in the — building, —, at which time and place all parties concerned are to attend.

Dated, — day of —, 1894.

C. G.,
Special Master.

No. 277.**Interrogatories for Examination of Witnesses Before
a Master.***[Caption.]*

Interrogatories to be exhibited on the part of the said plaintiff for the examination of witnesses to be produced, sworn, and examined before C. G., one of the masters of said district [*or, circuit*] court, pursuant to a decretal order made and entered in this cause on the — day of —, 1894.

First Int. State if you know the parties, plaintiff and defendant, in the above-entitled cause, or either (or any), and which of them, and how long have you known them respectively, or such of them as you do know; declare the truth and your utmost knowledge, remembrance, and belief herein.

[Continue with other interrogatories, and for the last one say:]

— *Int.* Do you know, or can you set forth, any other matter, or thing, which may be a benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject of this your examination, or the matters in question in this cause? If so, please state the same fully and at large in your answer.

No. 278.**Master's Report (1).***[Caption.]*

To the Honorable Judges, etc.:

In pursuance of a decretal order made and entered in this cause, and bearing date of the — day of —, 1894, at a stated term of this court, held at [*place of holding court*], in the city of —, in the said district, by which it was referred to C. G., of —, one of the masters of this court, to take and state an account of [*according to the decretal order*].

I, C. G., a master in said court, do respectfully report that I have proceeded to investigate the matters so referred to

me, and that pursuant to a summons duly issued, I have been attended by the parties, plaintiff and defendant, and their respective counsel in the above cause [*or as the fact may be*], and that, after taking due proofs, I find and report that [*here set forth the findings of the master*].

I do, therefore, respectfully report that the said defendant should be decreed to pay the said plaintiff the sum of — dollars, besides costs to be taxed.

I respectfully refer to schedules A, B, C, hereto annexed, as making a part of my report.

All of which is respectfully submitted.

Dated —.

C. G.,
Master.

(1) See Rule 76 in Equity.

No. 279.

Notice Accompanying Draft of Master's Report.

[*Caption.*]

Messrs. X. & X.,

Solicitors for Plaintiff,

and

Messrs. Y. & Y.,

Solicitors for Defendant.

Sirs: You are hereby notified that I have prepared the draft of my report upon the matters referred to me as master, by the interlocutory decree herein, dated the — day of —, and that a copy of such draft report accompanies and is annexed to this notice, and is herewith served upon you; you are also hereby notified that I shall sign and file said draft report as my report herein, unless alterations are made by me therein, upon suggestions of counsel for either party hereto, and that I appoint the — day of —, at my office, No. — street, in the city of —, at 11 o'clock in the forenoon of said day, for counsel for either party hereto to

present to me any suggestions of amendments to or alterations of said draft report, and to file with me written objections or exceptions thereto, if any they have to the same.

Yours, etc.,

C. G.,
Master.

Dated at —.

No. 280.

Exceptions to Master's Report.

[*Caption.*]

Exceptions taken by the plaintiff [*or, defendant*] to the report made herein by C. G., one of the masters of this court, to whom this cause was referred by an order of this court made and entered on the — day of —, 1894.

First Exception: For that the said master, in his said report, etc. [*state the objection*], whereas the said master should have, etc. [*state what it is claimed ought to have been reported*].

Second Exception: For that, etc.

R. X.,
Solicitors for, etc.

No. 281.

Final Decree on Master's Report.

[*Caption.*]

This cause having come on to be heard upon the report of C. G., Esq., one of the masters of this court, to whom it was referred to ascertain and report [*as in the decretal order*], which report bears the date of the — day of —, 1894, [*and also upon exceptions taken to the said report on the part of said plaintiff, and also on the part of said defendant, and upon the equity reserved*], and the said cause having been argued by counsel, and due deliberation had thereon—

It is ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, does order, adjudge, and decree that [*the decision of the court*].

And it is further ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, does order, adjudge, and decree that the said defendant pay to the said plaintiff the sum of — dollars.

And it is further ordered, adjudged, and decreed that the said defendant pay to the said plaintiff his costs in this suit to be taxed, and that the said plaintiff have execution for such costs, and for the sum above decreed to be paid to said plaintiff as aforesaid.

No. 282.

Reference to a Master in Special Cases.

For master's reports in particular cases see under titles "Patents" and "Proceedings relating to Receivers," etc.

No. 283.

Contempt Proceedings.

See under title "Patents."

No. 284.

Motion to Retax Costs.

[*Caption.*]

Now comes the defendant herein, and moves the court to retax the costs in the above-named cause by adding to the same already taxed the following items to-wit:

\$20.00 as docket fee.

\$20.90 as notary fees for taking depositions of S. M., G. H., and L. F.

\$15.00 as notary fees for taking depositions of F. L., B. R., and E. H.

\$15.00 as attorney's fees on the depositions of the six witnesses above named.

Y. & Y.,

Solicitors for Defendant.

[*An affidavit showing that the notary fees had been actually paid should be filed with this motion.*]

No. 285.**Cost Bill.**

See form No. 29.

No. 286.**Final Record in Equity.**

The plaintiff in the above-entitled cause filed his bill of complaint, which is hereunto annexed, on — day of —, and the writ of subpœna was thereupon issued and returned personally served.

An appearance was duly entered for the defendant by R. Y., his solicitor, and on the first Monday of — thereafter, an answer to said bill of complaint was filed, the same being hereunto annexed.

On the first Monday of — thereafter, the plaintiff filed a replication, the same being hereto annexed.

On the — day of —, an order of the court granting to the plaintiff a preliminary injunction as prayed for in the bill of complaint was filed and entered, which said order is hereunto annexed.

Testimony was thereafter taken by the respective parties and filed in the clerk's office of the said circuit court.

Afterwards, and at the — term of — of said court, present the Honorable G. W., district judge, the said cause came on to be heard on the pleadings and proofs, and was argued by counsel. On the — day of —, a decree of said court was filed and entered in favor of the plaintiff, by which it was adjudged that a perpetual injunction should issue against the defendant, and that an accounting be had before C. G., master of said court; the said order being hereunto annexed.

On the — day of —, the said master filed his report, upon which, and on the — day of —, the said court caused its final decree to be entered herein, the same being hereunto annexed.

And the costs having been taxed by the clerk at —— dollars, the process, pleadings, and decrees, together with other papers filed in said cause, are duly annexed hereunto.

Wherefore let the said A. B. recover of said C. D. the sum of —— dollars, as adjudged in said final decree, together with the further sum of —— dollars, the cost and charges as taxed, making in the aggregate the sum of —— dollars.

Signed and enrolled this —— day of ——. B. R.,

Clerk of the Circuit Court of the United States
for the —— district of ——.

[*Seal.*]

RECEIVERS.*

No. 287.

A Bill by Creditor Praying the Appointment of a Receiver (1).

Circuit Court of the United States
for the ——— district of ———.

A. B., Plaintiff,

vs.

C. & D. Railway Co., Defendant.

} In Equity.

To the Judges of the Circuit Court of the United States for
the ——— district of ———.

A. B., of ———, and a citizen of the state of ———, brings this
his bill on his own behalf and that of all other creditors and
stock-holders of the C. & D. Railway Co., who may choose to
become parties to this suit and contribute to the expenses
thereof, against the said C. & D. Railway Co., which is a cor-
poration organized and existing under the laws of the state of
———, and being a citizen of the state of ———, and an inhab-
itant of the ——— district of ———.

And your orator shows unto your honors that the defend-
ant was duly incorporated and organized under the laws of
the state of ——— on the ——— day of ———, as a common car-
rier company, with authority to lease, hold, and operate any
line of railway and its appendages within or without said
state of ———; that the capital stock of said company was three
million dollars, divided into thirty thousand shares of one
hundred dollars each, which stock was immediately all sub-
scribed and paid up, and on the ——— day of ——— said defend-

*See Beach's Modern Eq. Prac., Chapter 22.

ant company duly leased from the Northern Railway Co., by a written instrument bearing the date last mentioned, the line of railway known as the Northern Railway, which had been constructed and was owned by the said Northern Railway Co., a corporation organized and existing under the laws of the state of —, said Northern Railway extending from the city of — through the state of —, to the city of — in the state of —; together with all the appurtenances thereto belonging as specifically set forth in said lease, and said company at once took possession of said railway and has ever since been and still is engaged in operating the same as a common carrier of goods and passengers under said lease.

The entire capital of said company was shortly after its organization invested in rolling stock, betterments, and completion of said railway, which said company was required to make by the terms of said lease. Upon all the property represented by such investment of said capital, or otherwise acquired by said company, a lien was reserved by said lease prior and preferably to any and all other liens whatsoever, to secure the payment of the rents, taxes, and assessments reserved therein to be paid by said company, and to secure the faithful performance of the covenants of said lease by it. One of said covenants was that said company would provide and keep the said line of railway supplied with rolling stock and equipment so that the business of the same should be preserved, encouraged, and developed, and at all times be done with safety and expedition and the public accommodated in respect thereto with all practicable conveniences and facilities, and that the future growth of such business, as the same might arise or be reasonably anticipated, should be fully provided for and secured.

The rental reserved in said lease was \$800,000 per annum during the first five years of the term thereof; \$900,000 per year during the second five years; \$1,000,000 per year during the third five years; \$1,090,000 per year during the fourth period of five years, and \$1,250,000 per year during the last

period of five years, of the term of said lease, and an additional \$12,000 each year payable to the trustees of said railway. The present amount of rental which said company is required to pay under said lease is \$1,000,000 per year, payable quarterly, on the 12th day of January, April, July, and October in each year. The rolling stock of said company is insufficient, and what it has is greatly in need of renewal in order to enable said company to maintain said railway as provided in said lease, which would require a large sum of money to be expended each year in addition to said rent and to the ordinary maintenance of said property.

The earnings of said company have for some time past been and still are barely sufficient to pay said rental, leaving nothing for the other necessary expenditures aforesaid nor to meet other obligations, and for the past seven months there has been a deficiency of \$123,000 in such earnings in meeting the rent and other obligations of said lease. Said company has no property but said leasehold and the rolling stock and other investments aforesaid, with the exception of a small amount of real estate, whose value your orator can not state, but which value is inconsiderable, and which real estate, being used for terminal and other railroad purposes, can not be sold. Said company has no property which can be pledged or mortgaged to raise money, and has no credit to borrow money without security.

A large number of actions, in which large sums of money are claimed, are pending against said company in the courts of the state of —, state of —, and state of —, and in the federal courts therein, and the superior court of —, in an action which has been pending since shortly after the organization of said company, and has greatly embarrassed it in the prosecution of its business, has just rendered judgments against said company in favor of various persons, firms, and corporations, amounting in the aggregate to over \$300,000 exclusive of costs, which judgments are based on a fraudulent issue of spurious stock certificates by its former secretary shortly

after its organization. Said company has been advised by its counsel to prosecute proceedings in the supreme court of — for the reversal of such judgments, and said company desires and proposes so to do. In order to stay execution during such proceedings in error, a bond is required of said company in double the amount of said judgments, conditioned to pay the same in case they shall be affirmed. Said company has made every effort in its power, through its stockholders and otherwise, to procure such bond, but is wholly unable to do so. It has sought to induce said judgment creditors to accept a first mortgage, subject to the lien reserved by said lease, on all its property of every description wherever situated, but said creditors refuse to accept such mortgage, and threaten and will, unless prevented by the granting of the relief hereinafter prayed, issue and levy executions upon the property of this company situated in the state of —, and commence proceedings to subject to the payment of their said judgments its property situated in other states, thereby preventing said company from carrying on its business, disabling it from paying said rental and complying with the obligations of said lease, and causing the loss and forfeiture of said leasehold estate which is provided by the terms thereof in case of the failure of said lessee to comply with its obligations thereunder, and causing the entire loss to the stockholders and creditors of said company of its rights, franchises, and property.

Your orator is a stockholder in said company and a creditor thereof, being the owner of a certain judgment rendered against it in the supreme court of the state of — for the sum of seven thousand six hundred and thirteen dollars and twenty cents, with interest and costs, which judgment is and remains wholly due and unpaid, and the said company has no property subject to levy and sale upon execution to pay the same. Said company has judgments against it in all the said states on which it is liable to execution, and has a large floating debt, amounting to between 200,000 and 300,000

dollars net, which it has not sufficient resources or credit to meet, and said company is insolvent. Your orator is, furthermore, chairman of the board of directors of said company, and is charged with the duty of protecting and preserving said property for the equal benefit of its creditors and, after their payment, for the benefit of the stockholders thereof, and he avers that there is no adequate remedy at law for the prevention of the wrongs and injuries threatened as aforesaid, and for the preservation and protection of his rights above set forth, and that there can be no relief therefor only in equity.

Wherefore your orator, on behalf of himself and of all others in like relation to the said company and its property, prays the premises considered:

First. That a writ of subpœna issue against the defendant, the C. & D. Railway Co., requiring it to appear in this court and answer this bill of complaint, but without oath, all answers under oath being hereby expressly waived, and to stand and abide such orders and decrees as the court may from time to time adjudge and enter in the premises.

Second. That the court will fully administer as a trust fund all and singular the property, rights, and franchises belonging to said company, including said line of railway with all and singular its appurtenances so held by lease as aforesaid, and will marshal all assets and ascertain the several respective liens and priorities existing thereon, and enforce and decree the rights, liens, and equities of each and all the stockholders and creditors thereof as the same may be finally ascertained and decreed by the court upon the respective interventions or applications of each and every creditor or stockholder.

Third. That for the purpose of enforcing the rights and equities of the creditors of said company, as well as of protecting the rights, interests, and property of said company, and to secure as far as possible the performance of the duties which said company owes to the public as a common carrier, as well as to preserve the unity of the business and property

of said railway company as the same has been maintained and operated since the year of 18—, and of preventing disruption thereof by separate executions, attachments, or sequestrations, and of preventing the loss and forfeiture of its leasehold and other property by reason of its failure to pay the rental reserved thereon as aforesaid, this court forthwith appoint a receiver of all and singular the property, rights, assets, and franchises of every nature and wherever situated, held, owned, or controlled by said company, together with all leasehold rights and contracts, with full authority to manage and operate the same under the direction of the court; and that all of the officers, managers, superintendents, agents, and employees of the said company be required forthwith to deliver up to such receiver the possession of all and singular each and every part of the said property wherever situated; and also all books of accounts, vouchers, and papers in any way relating to its business or the operation of its said railway; and for an injunction restraining each and every of the officers, directors, managers, superintendents, agents, and employees of the said company from in any way interfering with the possession and control of such receiver over said property.

Fourth. That at such time as may be found just and proper, the property of said company may be ordered to be sold and the proceeds distributed among those entitled thereto, and that your orator may have such other and further relief as to the court may seem proper and as may be necessary to fully protect and enforce the rights and equities of your orator and of all other creditors and stockholders of said company.

A. B.

X. & X.,

Solicitors for Plaintiff.

[*Verification, see No. 85.*]

(1) See Beach's Modern Eq. Pleadings, Sec. 729, and Notes.

No. 288.**Bill for the Foreclosure of a Railway and Appointment of Receiver.**

For form of Bill in Equity, together with the full proceedings relating to the appointment of receivers, etc., in connection with the foreclosure of a railway, see Beach's Modern Equity Practice, p. 1103 *et seq.*

No. 289.**Bill for an Account of Partnership Dealings and Dissolution, and for a Receiver.**

For form of bill, see No. 89.

No. 290.**Affidavit of Insolvency in Support of Bill (1).**

State of ———,
County of ———, ss.

G. L., of lawful age, being duly sworn, on oath says, that he resides in the city of ———, state of ———, and is the Treasurer of the C. D. Co., a New Jersey corporation, defendant in the foregoing bill of complaint; that he has heard the foregoing bill of complaint read, and is familiar with the facts therein stated. That all said facts with reference to the formation of said corporation, its purposes, the amount of its stock, and its business and property, are true to his own knowledge. That a debt of ——— dollars due on call by said corporation to the ——— National Bank of the city of ——— was demanded on call, and became due and payable on the ——— day of ———, 1893, and payment thereof was refused and default made therein, because of lack of sufficient funds of said corporation to pay the same. Further debts of said corporation matured on the ——— day of ———, 1893, amount-

ing to not less than — dollars, and default was made in the payment thereof, because of lack of funds to pay the same. On the — day of —, 1893, further debts of said corporation matured, amounting to not less than — dollars, and default was made in the payment thereof for lack of funds. Daily thereafter during the month of — debts will mature.

The total amount of which said indebtedness maturing from the — day of — to the — day of —, 1893, is more than — dollars. The corporation is also indebted in amounts which will mature from day to day during the months of —, —, and —, in 1893, exceeding — dollars.

The corporation is without funds to meet the said indebtedness, or any considerable part thereof, and has no assets which are readily convertible into money, and has no reasonable prospect of being able to meet its obligations after this date. The assets of said corporation consist of several [*cordage*] mills, owned or operated at least in the several cities mentioned in the bill of complaint, and all the [*cordage and twine*] manufactured, and in manufacture, and in process of manufacture, the value of all which it is impossible at this time to estimate, or to even approximate.

That the corporation also has certain assets, consisting of open accounts receivable and bills receivable, the greater part of which mature in —, —, and —, 1893, and a very small part of which is available for the raising of money at this time. The securities of said company which are available for the raising of said money are already pledged and hypothecated for debts due by the corporation. The corporation can not pay its maturing obligations, and has no means of raising money to pay the same, and is in fact unable to pay its debts, and is insolvent. G. L.

Subscribed and sworn to before me this — day of —, 1893. J. N.,

[*Seal.*]

[*Official title.*]

No. 291.**Entry of Appearance and Answer.**

[*Caption.*]

And now comes the C. D. Co., defendant in the above-entitled cause, and waives the issuing and service of subpoena, and enters its appearance herein, and admits that the several statements and charges of said bill of complaint are true.

Y. & Y.,
Attorneys for the C. D. Co.

No. 292.**Order Appointing Receiver for a Railway.**

[*Caption.*]

Upon reading and considering the verified bill in this cause, together with the evidence adduced, on motion of counsel for the plaintiff, the defendant having been duly notified to appear by its counsel, it is ordered by the court that S. M. be and is hereby appointed receiver of this court of all and singular the property, assets, rights, and franchises of the C. & D. Railway Company described in the bill of complaint herein, wherever situated, including all the railroad tracks, terminal facilities, real estate, warehouses, offices, stations, and all other buildings and property of every kind owned, held, possessed, or controlled by said company, together with all other property in connection therewith, and all moneys, choses in action, credits, bonds, stocks, leasehold interests, operating contracts, and other assets of every kind, and all other property, real, personal, and mixed, held or possessed by it, to have and to hold the same as the officer of and under the orders and directions of the court.

The said receiver is hereby authorized and directed to take immediate possession of all and singular the property above described, wherever situated or found, and to continue the operation of the railroad of said company, and to conduct

systematically, in the same manner as at present, the business and occupation of carrying passengers and freight, and the discharge of all the duties obligatory upon said company.

And said C. & D. Railway Company, and each and every of its officers, directors, agents, and employes are hereby required and commanded forthwith to turn over and deliver to such receiver or his duly constituted representative any and all books of accounts, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, money, or other property in his or their hands or under his or their control, and they are hereby commanded and required to obey and conform to such orders as may be given them from time to time by the said receiver or his duly constituted representative in conducting the said railway and business, and in discharging his duty as such receiver; and they and each of them are hereby enjoined from interfering in any way whatever with the possession or management of any part of the business or property over which said receiver is so appointed, or from in any way preventing or seeking to prevent the discharge of his duties as such receiver. Said receiver is hereby fully authorized to continue the business and operate the railway of said company, and manage all its property at his discretion in such manner as will, in his judgment, produce the most satisfactory results consistent with the discharge of the public duties imposed on said company, and to collect and receive all income therefrom and all debts due said company of every kind, and for such purpose he is hereby invested with full power at his discretion to employ and discharge and fix the compensation of all such officers, counsel, managers, agents, and employees as may be required for the proper discharge of the duties of his trust.

And said receiver is directed to deposit the moneys coming into his hands in some bank or banks in the city of —, —, and to report his selection to the court.

Said receiver is hereby fully authorized and empowered to institute and prosecute all such suits as may be necessary, in

his judgment, to the proper protection of the property and trust hereby vested in him, and likewise defend all actions instituted against him as receiver, and also to appear in and conduct the prosecution or defense of any and all suits or proceedings now pending in any court against said company, the prosecution or defense of which will, in the judgment of said receiver, be necessary and proper for the protection of the property and rights placed in his charge, and for the interest of the creditors and stockholders of said company (1).

Said receiver is hereby required to give bond in the sum of \$100,000.00, with security satisfactory to this court, for the faithful discharge of his duties, and is also required to make and file full reports in this court quarterly.

And the court reserves the right by orders hereinafter to be made, to direct and control the payment of all supplies, materials, and other claims, and to in all respects regulate and control the conduct of said receiver.

J. S.,

Circuit Judge.

And thereupon came in open court said S. M., and accepted such appointment, and was thereupon duly sworn according to law, and tendered his bond as required by said order, with W. P. and C. J. as sureties therein, which bond is hereby approved and accepted (2).

(1) As to the rights of a receiver to sue, see Beach's Modern Eq. Prac., Secs. 742 and 743.

(2) See note at the end of No. 293.

No. 293.

Order Appointing Receiver for a Manufacturing Corporation.

[Caption.]

Upon reading and filing the verified bill of complaint in this cause, together with the verified affidavits of J. W. and G. L. and the exhibits in support thereof, and on motion of the counsel for plaintiff, and counsel for defendant appearing

and consenting thereto, it is ordered by the court that E. Y., of —, in the state of —, and C. L., of —, in the state of —, be and they are hereby appointed receivers of this court of all and singular the property of the N. C. Co. of every description, and all money, claims in actions, credits, bonds, stocks, leasehold interests or operating contracts, and other assets of every kind, and all other property, real, personal, or mixed, held or possessed by said company, to have and to hold the same as officers of and under the orders and directions of this court.

The said receivers are hereby authorized and directed to take immediate possession of all and singular the property above described, and to continue the business of said company.

Each and every of the officers, directors, agents, and employees of said N. C. Company are hereby required and commanded forthwith, upon demand of the said receivers, to turn over and deliver to such receivers any books, papers, moneys, or deeds, or property, or vouchers for the property, under their control.

The said N. C. Company and its officers are hereby directed immediately to execute and deliver to the said receivers deeds of all real estate now owned or possessed by said company, and transfers and assignments of all their property.

Said receivers are hereby fully authorized to institute and prosecute all such suits as they may deem necessary, and to defend all such actions instituted against them as such receivers, and also to appear in and conduct the prosecution or defense of any suits against the said N. C. Company.

The said receivers are hereby authorized and directed out of the moneys coming into their hands to pay and discharge all amounts due to employees upon the current pay-roll.

Each of the said receivers is required to file with the clerk of the court within ten days from date a proper bond, the sureties to be approved by the clerk of this court, in the penal sum of — dollars.

All creditors of said N. C. Company are hereby enjoined from in any way intermeddling with the property hereby directed to be turned over to said receivers; and all officers, directors, and agents of said N. C. Company are hereby enjoined from interfering with or disposing of said property of said N. C. Company in any way, except to transfer, convey, and turn over the same to said receivers.

J. S.,

Circuit Judge.

[If the receivers appear in open court at the time the order is made, an entry like that appearing at the end of No. 292 should be made. When the receivers appear and accept the appointment later, an entry should be made stating such fact.]

No. 294.

Oath of Receiver.

[Caption.]

I, the undersigned, S. M., having been appointed receiver of the C. & D. Railway Company, do solemnly swear that I will faithfully perform the duties of that office and obey all the orders of said court. So help me God. S. M.

Subscribed and sworn to before me this — day of —.

J. S.,

Circuit Judge.

No. 295.

Bond of Receivers.

[Caption.]

This undertaking, made and entered into the — day of —, witnesseth: that we, S. M., as principal, and E. F. and G. H., as sureties, do promise and undertake, to and with the clerk of said court, for the benefit of whom it may concern in the penal sum of — dollars, that the said S. M. will faithfully discharge the duties of receiver of the C. & D. Railway Company, and obey all orders of the court herein.

Witness our hands and seals this — of —, 1894.

S. M. [*Seal.*]

E. F. [*Seal.*]

G. H. [*Seal.*]

State of —,

County of —, ss.

I, E. F., one of the sureties named in the within bond, do swear that I am pecuniarily worth the sum of — dollars over and above all my debts and liabilities and legal exemptions.

E. F.

Sworn to before me this — day of —, 1894.

[*Seal.*] E. G., Notary Public.

Approved this — day of —, 1894.

J. S.,

Circuit Judge.

No. 296.

Order that Receivers Give Notice to Stockholders by Publication.

For form, see No. 323. The necessary alterations can readily be made for pleading in the original suit.

No. 297.

Petition for Order Limiting Time to Present Claims, etc.

For form, see No. 324. The necessary alterations can readily be made for pleading in the original suit.

No. 298.

Petition for an Order upon a Defendant to Deliver to the Receivers the Deed Records, Plats, and Other Muni- ments of Title (1).

[*Caption.*]

The receivers, S. M. and H. C., respectfully show :

First. The title papers to the real property in their possession consist of deeds of conveyances for right of way, depot

grounds, and other parcels and tracts of land used by the railway company in the operation and maintenance of said railway, and lands purchased or donated to said railway or its grantors as authorized by its charter.

Second. That said C. & D. Railway Company, and the other corporations whose property is now in the possession of these receivers, and their grantors during the time of the construction of said railways, and from time to time as their requirements rendered necessary, condemned by proceedings in court in the different counties along the lines of said railways, tracts of land for right of way, depot grounds, and for other necessary purposes, and for their convenience, had prepared and on file in their offices copies of all such condemnation proceedings.

Third. That said C. & D. Railway Company, also for the convenience and use of its officers and employees, that they might readily ascertain the exact boundaries of the different tracts and parcels of land, so conveyed to it and its grantors, or the other lines of railway in its possession and operated by it, or condemned as aforesaid, caused full and accurate surveys of the same to be made, and caused plat books and surveys made thereof, and caused indexes to be prepared thereof.

Fourth. That said papers, records, plats, etc., show in convenient shape all the property along the lines of said railway now in the possession of these receivers, and the title thereof, and the rights of all of said railways in each piece of said property, and how acquired, and from whom and under what contracts or conditions, if any.

Fifth. That said papers, plats, etc., are of great necessity in the operation of said railway, in that they constitute the muniments of title to all of said property, and show the boundary and extent thereof from actual surveys, and enable your receivers to readily ascertain what real estate is covered by the orders of this court, of what they are entitled to take possession, and of what they are required to defend the possession against adverse claimants or intruders, and of what they

may rightfully occupy and use in the operation and maintenance of said railway, and by which they may ascertain any conditions upon which any tract of land is held, and determine how, or in what respect, they may be required to comply with demands on them for performance of such conditions.

Sixth. That these receivers require said muniments of title and surveys in many respects as fully and as necessarily as the C. & D. Railway Company did at the time they procured the same.

Seventh. That all of said plats, surveys and books and indexes are in the possession of the defendant, the Missouri Pacific Railway Company, and they have neglected and refused to deliver the same to these receivers, though requested to do so.

Wherefore, these receivers pray for an order upon said C. & D. Railway Company, defendant herein, to deliver to them all of said deeds, papers, plats, surveys, and books and indexes.

Z. & Z.,

Solicitors for the Receivers.

(1) The order asked for in this petition is usually included in the order appointing receiver, and this petition is only needed when such is omitted from the order appointing the receiver.

No. 299.

Order Requiring Defendant to Turn Over to Receivers Books, Plats, and Deeds (1).

[*Caption.*]

ORDER.

At this day the petition of the receivers for an order directing the defendant, the C. & D. Railway Company, to deliver to them certain deeds, records, plats, surveys, and other muniments of title to the real property in their possession under the order of this court having been presented to this court, and the court having duly considered the same, it is ordered that the said C. & D. Railway Company deliver to said receivers

all deeds of conveyance, records, plats, surveys, and books, and all other papers and muniments of title in their possession or under their control pertaining to or affecting the title or right to the possession of the real estate in the possession of the receivers under the orders of the court, or show cause on the — day of —, at 10 a. m., before me at the United States court room in the city of —.

J. S.,

Dated —.

Circuit Judge.

The foregoing order made absolute, and the receivers and C. & D. Railway Company shall make schedule, and receivers shall receipt for same.

J. S.,

Dated —.

Circuit Judge.

(1) See petition No. 298 and note to same.

No. 300.

Petition by Receiver for Authority to Settle Traffic Balance.

[Caption.]

Petition by the receivers for authority to adjust, settle, and pay traffic balances between the C. & D. and other railroads.

S. M. and H. C., receivers of the C. & D. Railway, respectfully show :

I. By the decree made in this case on the — day of —, and filed herein on the — day of —, being the decree appointing your petitioners receivers, among others the following order was made :

“*Fifth.* The matter of the payment of balances due or to become due to other railroads or transportation companies growing out of the exchange of traffic is reserved for further orders.”

II. Since your receivers have taken possession of the C. & D. Railway, there have arisen traffic balances between the C. & D. Railway, operated by your receivers, and other railways

and transportation companies. These traffic balances consist generally of,—

First. Freight balances, which are amounts found to be due as between freight delivered to connecting lines by the C. & D. Railway, and received from connecting lines by said railway.

Second. Ticket accounts. These result from the sale of coupon tickets by the C. & D. Railway over foreign lines, and the sale by foreign lines of such tickets over the C. & D. Railway.

Third. Mileage accounts. These accounts comprise the mileage of the cars of other railway companies over the line of the C. & D. Railway, and the mileage of its cars over other railways.

These traffic balances are sometimes in favor of one road and sometimes in favor of the other. It is vitally necessary in the transaction of railway business that these traffic balances should be promptly paid by the respective railways at stated times.

III. There are traffic balances which will soon have to be discharged arising out of the operation of the railway in charge of your receivers, which will have to be settled, adjusted, collected, or paid within a short time, and your receivers should have full authority to adjust, settle, collect, or pay them according to the prevailing usage existing among railway companies, so that there may be no interruption of the relations between the railway in charge of your receivers and other railways of the country.

Wherefore your petitioners pray that an order be entered granting them authority to adjust, settle, collect, and pay all traffic balances arising out of the operation of the C. & D. Railway since —, 1894, and which may hereafter arise from time to time.

Z. & Z.,

Solicitors for the Receivers.

State of —,
County of —, ss.

I, S. M., on oath, state that I am one of the receivers of the C. & D. Railway; I have read the foregoing petition, and the facts therein stated are true, as I verily believe.

S. M.

Subscribed and sworn to before me this — day of —.

[Seal.]

E. G.,

Notary Public.

No. 301.

Order Authorizing Receiver to Settle Traffic Balances.

At this day the petition of the receivers for authority to adjust, settle, collect, and pay all traffic balances arising in the operation of the C. & D. Railway since —, 1894, when the receivers took possession of said railway, having been presented to the court, and the court having fully considered the same, and being fully advised in the premises, it is ordered that the receivers be and are hereby authorized to adjust, settle, collect, and pay all traffic balances between the railway in their charge and other railroads or transportation companies arising out of the operation of the C. & D. Railway since —, 1894, and which shall hereafter arise, according to the usual methods prevailing among the railroad and transportation companies of the country.

J. S.,

Circuit Judge.

No. 302.

Order to Pay Rent.

[Caption.]

This day came the receiver and represented to the court that the installment of rent due to the Northern Railway Company the — day of —, 18—, under the lease referred to in the bill herein, has not been paid, and that the period

of ninety days grace provided in said lease will expire the — day of —, 18—, and that said receiver expects to have on hand sufficient funds to pay said rental on or before said last-named date, and asks authority of the court to make such payment, and thereupon it is ordered by the court that the receiver be and is hereby authorized to make such payment.

J. S.,
Circuit Judge.

No. 303.

Petition of Receiver for Permission to Defend Suits and Compromise Claims.

[*Caption.*]

Your petitioner, S. M., would respectfully show to your honors, that prior to his appointment as receiver herein, certain suits had been brought against the C. & D. Railway Co., praying for damages to person or property; that under the laws of the state of —, and —, such claims, when reduced to judgment, are liens prior in right to the mortgage issued by the defendant upon its property, and that there are certain suits pending in the courts of the state of —, and in the Circuit Court of the United States for the —, district of —.

Your petitioner further shows that such suits or claims can generally be compromised and adjusted at sums which it is to the interest of the defendant and its creditors to promptly accept, thereby saving much cost of litigation and other considerable amounts as compared with the usual expense and the results of such litigation; and that other of such suits will have to be defended by your petitioner as receiver at the cost of the fund in the hand of your petitioner.

Your petitioner, therefore prays that an order of court be made herein, permitting your petitioner as receiver of the defendant corporation to appear and defend the suits that have heretofore, or may hereafter, be brought in this state against the defendant corporation to recover damages for

injuries to persons or property, and that your petitioner be given the right and discretion to compromise and adjust and settle any suits or claims against the defendant corporation for damages to persons or property, or any claims arising in the operation of the road committed to his charge, if, in the judgment of his counsel, it is proper to compromise, adjust, and settle such cases or claims, upon such terms as may be agreed upon between him and the litigants or claimants, and as in duty bound, he will ever pray, etc. S. M.

[*Verification, see No. 85.*]

No. 304.

Order Appointing Special Master Commissioner to Hear and Report Claims.

[*Caption.*]

It is now ordered by the court that suits and proceedings against the receiver herein upon any cause of action or claim against the C. & D. Railway Co. accruing prior to the — day of —, 18—, be brought only by intervening petition filed in this cause; also that no process of attachment or execution, or other final process whatever be issued against said receiver for any act of his in the operation of the C. & D. Railway Co. otherwise than upon leave granted upon intervening petition.

It is further ordered that R. P. be, and he hereby is appointed a commissioner of this court for the purpose of hearing and considering the above claims; and also such other claims against the receiver herein, growing out of his operation of the road, as may be brought before him; and that the said commissioner have the power to hear and consider all such claims, and that the receiver be directed to appear before the said commissioner upon short notice served upon himself or upon an agent authorized by him to be served in his stead, to answer any claim filed with the said commissioner; and that said commissioner have the power to take

testimony and report the same with his findings to this court, and that unless such claimant or receiver shall within thirty days after the filing of the said report appeal from the same to this court, said report shall become final, and the receiver herein is hereby directed and authorized thereupon to pay out of any moneys coming into his hands such amount as the commissioner may award on said claim.

It is further directed that said receiver do not in any case hereafter appear to answer any garnishment against any of his employees, but that all claims against said employees be presented to the said commissioner hereinbefore appointed; and that upon his notice of such claim the said receiver shall forthwith notify said employee, and shall withhold from said employee from money otherwise due a sufficient amount to satisfy said claim, and that upon order of said commissioner the same shall be paid either to the said employee or to the said claimant, as said commissioner may direct and adjudge.

And it is further hereby ordered that that certain order heretofore entered herein on the — day of —, 18—, requiring, among other things, that suits of every kind against the receiver be brought only in the Circuit Court of the United States, be and the same is hereby rescinded and set aside from and after the entry of this order, and that the order shall stand in lieu thereof.

J. S.,
Circuit Judge.

No. 305.

Order to Pay Claims Accruing Prior to the Appointment of the Receiver.

[*Caption.*]

If is hereby ordered that the receiver herein be and is hereby authorized to pay out of any funds in his hands and applicable to the business of the railway being operated by him under the order of the court herein, and all claims accruing during the period of six months immediately prior to the appointment of the receiver herein, for supplies, ma-

terials, wages, salaries, and expenses incurred by agents and employees, traffic balances with other common carriers, injury to or loss of property of shippers in transit, and for the use of the tracks, terminals, or other facilities of other railways used by the C. & D. Railway Co. in the ordinary transaction of its business.

J. S.,
Circuit Judge.

No. 306.

Quarterly Statement of Receiver (1).

S. M., Receiver, in Account with C. & D. Railway Company,
from July 1, 18—, to September 30, 18—, inclusive.

Receipts.	Accrued prior to appointment of receiver and collected under receivership.	Accrued and collected under receivership.
Balance July 1, 18—, \$—		
Agents' remittances,	\$—	\$—
Conductors' remittances,	\$—	\$—
Mail earnings,	\$—	\$—
Miscellaneous earnings,	\$—	\$—
Express earnings,	\$—	\$—
Ticket balances,	\$—	\$—
Mileage balances,	\$—	\$—
Sundry railroads,	\$—	\$—
Sundry individuals,	\$—	\$—
Audited pay-rolls,	\$—	\$—
Total,	\$—	\$—
Disbursements.	Accrued prior to appointment of receiver.	Accrued under the receivership.
Audited vouchers,	\$—	\$—
Audited pay-rolls,	\$—	\$—
Audited claims,	\$—	\$—
Ticket balances,	\$—	\$—
Mileage balances,	\$—	\$—
Sundry railroads,	\$—	\$—
Sundry individuals,	\$—	\$—
Car trust notes,	\$—	\$—
Rental of roadway,	\$—	\$—
Total,	\$—	\$—

RECAPITULATION.

Receipts.

Balance July 1, 18—,	\$—	
Accrued prior to appointment of receiver and collected under receivership,	\$—	
Accrued and collected under re- ceivership,	\$—	Total, \$—

Disbursements.

Accrued prior to appointment of receiver,	\$—	
Accrued under receivership,	\$—	Total, \$—
Balance September 30, 18—,	\$—	

(1) As to receiver's accounts generally, see Beach's Modern Eq. Prac., Sec. 748.

No. 307.

Certificate of Special Master to Statement of Receiver.

[Caption.]

I, A. H., special master, hereby certify that I have examined the accounts of S. M., receiver, and the receipts and disbursements for the quarter ending September 30, 18— [the period covered by the foregoing statement], and that I find the same correct and as shown in said statement.

Given under my hand this — day of —, 18—.

A. H.,
Special Master.

No. 308.

Petition for Permission to make Receiver Party to a Suit in a State Court (1).

[Caption.]

C. L., the above-named petitioner, respectfully shows to your honors, that an action is now pending in the superior court of —, a court of the state of —, sitting in the city of —, in said state, numbered — on the docket of said

court, wherein said C. L. is plaintiff and the C. & D. Railway Company is defendant. In said action your petitioner avers that said defendant has, without her consent and authority, and without authority of law, constructed a railroad track on premises owned by your petitioner on the south side of S street, east of H street, in said city; that said defendant has also constructed a railroad track across S street in the neighborhood of said premises of your petitioner without authority of law or the consent of your petitioner; that said defendant was at the time said action was brought maintaining and operating said tracks, and thereby obstructing the ingress and egress of your said petitioner to her said property, and using her property illegally. In said action your petitioner prayed that the said defendant, the C. & D. Railway Company, might be perpetually enjoined from maintaining and operating said tracks, and required to pay the plaintiff the sum of — dollars damages for the use of same already had. On the — day of —, said superior court of —, made an order, upon the motion of your petitioner, enjoining the said C. & D. Railway Company, until further orders of said court, from maintaining and operating said tracks on the premises aforesaid of your petitioner and on said S street, upon your petitioner's giving bond in the sum of — dollars. Said bond was that day given, and the injunction, as ordered by the court, was issued and served upon the C. & D. Railway Company. On the — day of — said railway company filed its answer in said cause, taking issue with the averments of your petitioner that said track on S street was laid without the authority of law, and while admitting that the track, at the time the petition of said C. L. was filed in said court, was laid upon the premises of your petitioner, averring further that since said track had been removed, and was then situated upon the premises of said railway company; and at the same time said railway company filed its motion praying said court to dissolve said order of injunction. On the — day of —, by leave of said court, your petitioner filed her

reply in said court, admitting that said track that was upon her premises at the time said action had been begun had been moved, but averring that the same as then located was still upon the property of your petitioner.

Said injunction is still in full force and unrevoked.

Afterwards in this suit brought by A. B. against the C. & D. Railway Company in this court, your honors, upon the — day of —, 18—, appointed S. M. receiver of said railroad company. Said S. M. now claims that the order of injunction of said superior court of — is not operative and binding upon him; and further, that, as your petitioner is informed, he, the said S. M., is not a party to said cause in said superior court of —; and said S. M. is now using, maintaining, and operating said tracks in defiance of said orders of said superior court of —, and to the prejudice of your petitioner.

Your petitioner therefore prays the leave of this court to sue said S. M. as such receiver, and to cause him to be made a party defendant in said cause now pending in said superior court of —, and that he be required to submit himself fully to the jurisdiction of said court with reference to the right of said C. & D. Railway Company, and of himself as its receiver, to construct, maintain, and operate the tracks of which your petitioner in said action complains. C. L.

R. X.,

of Counsel for Petitioner.

(1) It is a general rule, that before suit is brought against a receiver that leave of court must be had from the court appointing such receiver, and suing without such leave is contempt of the court appointing him. See Beach's Modern Eq. Prac., Sec. 744; *Wiswell vs. Sampson*, 14 How. 65; *Davis vs. Gray*, 16 Wall., 203 (218); *Naumburg vs. Hyatt*, 24 Fed. Rep., 898; *Thompson vs. Scott*, 4 Dill., 508. But see also 25 Stat. at L., chap. 866, sec. 3, p. 436; 24 Stat. at L., chap. 373, sec. 3, p. 554, and for cases involving a construction of this act, see *Missouri Pac. Ry. Co. vs. Texas Pac. Ry. Co.*, 41 Fed. Rep., 310 (314); *Central Trust Co. vs. St. Louis, etc., Ry. Co.*, 41 Fed. Rep., 551; *Atkins vs. Wabash Ry. Co.*, 41 Fed. Rep., 193 (194); *Pine Lake Iron Co. vs. LaFayette Car Works*, 53 Fed. Rep., 853. As to torts, see *McNulta vs. Lockridge*, 142 U. S., 1.

No. 309.**Order Granting Leave to the Above Petitioner.**

[*Caption.*]

The petition of C. L., for leave to make S. M., receiver in this cause, party defendant in an action now pending in the superior court of —, numbered — on the docket of said court, wherein said C. L. is plaintiff and the C. & D. Railway Co. is defendant, having been presented and considered by the court, it is now ordered that the prayer of said petition be granted, and that C. L. be permitted to cause said S. M., the receiver heretofore appointed in this suit, to be made a party defendant in said cause pending in the superior court of —, and that said S. M., receiver, submit himself fully to such orders as may be made by said superior court of — in said action now pending therein.

J. S.,

United States Circuit Judge.

No. 310.**Intervening Petition.**

For Petitions of Intervention, consult forms Nos. 327 to 333. The necessary changes can be readily made for pleading in original suit. See note to No. 308.

No. 311.**Order Discharging Railway Receivers and Restoring Property.**

[*Caption.*]

A decree having been entered in this suit upon the — day of —, wherein and whereby it was, among other things, ordered, adjudged, and decreed that the C. & D. Railway Company should, on or before the expiration of thirty days from the date of the said decree, pay into this court, or into the hands of a depository to be named by this court, to

the credit of this suit, for the use and benefit of the holders of the bonds and unpaid coupons secured by the mortgage of December 1, 18—, and the several mortgages and the certain indenture supplemental thereto, the sum of — dollars, together with the amount of interest accrued or to accrue on the said bonds from the 1st of December, 18—, to the time of such payment, and also a sum of money sufficient, in addition, to defray the costs of this action.

On reading and filing a satisfaction piece, dated the — day of —, duly executed, acknowledged, and delivered by the A. B. Company, of the three certain indentures of mortgage, dated respectively December 1, 1880, December 1, 1886, and December 1, 1887, and a certain other satisfaction piece, dated the 14th day of October, 1890, duly executed, acknowledged, and delivered by the A. B. Company, of a certain indenture, dated March 1, 1882, being the same mortgages and the indenture referred to and described in the bill of complaint herein, by which satisfaction pieces the A. B. Company certifies that the three mortgages and the certain indenture as aforesaid, and the bonds secured by the same, are paid and satisfied, and consents that the said mortgages and the said indenture be discharged of record.

And on reading and filing a stipulation, dated —, and signed by the counsel for all parties to this suit, by which it appears that all of the bonds secured by the said mortgages and by the said indenture, and of all the interest due thereon, have been paid by the C. & D. Railway Company to the A. B. Company, trustee; and by which it further appears that the C. & D. Railway Company has also paid and discharged all the other sums of money which by the said decree it was required to pay; and by which stipulation it is also consented that a proper order, satisfying and discharging the said decree of the — day of —, may be entered in this suit.

And on reading and filing the petition of the C. & D. Railway Company, verified the — day of —, praying

that the receivers of the railway and property of the petitioner be upon the — day of — discharged, and the said railway and property restored to the petitioner.

And on reading and filing the report of the receivers, Messrs. S. M. and H. C., verified on the — day of —, showing, among other things, the total amount of their receipts and disbursements, substantially, to the date of the hearing upon the motion for the entry of this decree, containing also a statement of suits now pending against them as receivers, or against the C. D. Railway Company and any of its ancillary companies, and of all claims filed against or presented to said receivers, or said railway company, so far as they have come to the knowledge of the said receivers, and a general statement of the outstanding liabilities of the said receivers, growing out of the possession, operation, and management of the property of the C. & D. Railway Company by said receivers.

And Messrs. S. M. and H. C., receivers of all of the said property, appearing by R. Z., Esq., their solicitor, and the matters and things hereinbefore suggested being submitted to the court, and the court being advised.

Now, on motion of R. X., Esq., of counsel for the petitioner, the C. & D. Railway Company,

It is hereby ordered, adjudged, and decreed as follows:

First. That the said decree of the — day of —, is, in all respects, satisfied and discharged, in so far as the same requires the payment by the C. & D. Railway Company of any sums of money. This cause, however, being retained as and for the purposes hereinafter provided.

Second. That the C. & D. Railway Company has duly and fully paid to the A. B. Company, trustee, all the sums of money which by the said decree, were directed to be paid; the said payments amounting to the sum of — dollars, together with the amount of interest accrued upon the said sum from the 1st day of December, 18—, to the date of the payment thereof; and the said railway company has also

duly and fully paid to the said A. B. Company, trustee, and to its counsel, in full, all its and their reasonable commission, charges, fees, and disbursements in the execution of the trust, and in the prosecution of the litigation herein, which said several sums and amounts have, by it and them been accepted by them in full for its and their services rendered herein, and the said railway company has also duly and fully paid all costs and allowances which by the said decree were directed to be paid.

Third. That on the — day of —, at the hour of noon that day, Messrs. S. M. and H. C., as receivers, are hereby ordered and directed to deliver to the C. & D. Railway Company all the railroads and other property of the said C. & D. Railway Company, the D. & W. Railway Company, etc. [*name all the railways included in this order*], wheresoever situated, whereof they took possession as receivers, under and pursuant to the orders of this court, and under and pursuant to the orders in causes ancillary hereto, and which shall then remain in their possession or under their control, together with all the assets of every name and nature, funds, books and accounts, papers and vouchers in their possession, or under their control as receivers; and the said receivers shall, contemporaneously with the delivery of the said railroads and property, assign and transfer to the C. & D. Railway Company all the assets, uncollected accounts, and choses in action of the said C. & D. Railway Company, or of either of the before-mentioned railway companies remaining in their hands, and which have accrued to them as such receivers from the possession and operation of said lines of railway or of any of them; and the said C. & D. Railway Company, on the day and at the hour aforesaid, to wit, upon the — day of —, at the hour of noon of that day, shall receive and take possession of all the railroads and other properties, real, personal, and mixed, and of all the funds and assets, books and accounts, papers and vouchers, claims, demands and choses in action in the hands of S. M. and H. C. afore-

said, receivers of the C. & D. Railway, heretofore appointed and now acting under orders made in this cause and in the ancillary causes between the same parties pending in the circuit courts of the United States for [*here name all the courts wherein ancillary proceedings have been had*]; and upon such transfer, assignment, and delivery of the property aforesaid by the receivers to the railway company, the property of the said C. & D. Railway Company and of the other companies heretofore mentioned shall become liable for all claims and demands accrued, accruing, or to accrue against said receivers, arising out of their possession and operation of the said railroads and property which are and have been in their hands or under their control as receivers, including all claims or demands against them arising out of their operation of the E. & F. Railroad, which has heretofore been surrendered under orders made in this cause and in the ancillary cause pending in the circuit court of the United States for the — district of — at —, and also all claims and demands existing against said receivers under their receivership by order of appointment made in the cause pending in the circuit court of the United States for the — district of — at —, wherein the Safe Deposit Company of — is plaintiff, and the C. & D. Railway Company, the E. & F. Railroad Company and others are defendants; and also all the current liabilities of said receivers, and all contracts for which the said receivers are or may be responsible.

Fourth. That the said C. & D. Railway Co., and those claiming under them, shall take and receive, on said — day of —, 18—, the railroads and properties so transferred, assigned, and delivered as hereinbefore ordered, subject to all claims, demands, and liabilities now existing, or which hereafter may be made against said receivers, arising out of their receivership, and this court reserves and retains jurisdiction over the said railroads and properties, and the said parties hereto and those claiming under them, for the purpose of determining in this cause, or having determined in any of

the circuit courts of the United States in any of the ancillary causes having ancillary jurisdiction herein, all such claims, liabilities, and demands, and for the purpose of fully protecting the receivers against any liability on any claims or demands existing or to exist against them, and for the purpose of protecting those having claims against said receivers.

Fifth. That this cause is retained and kept open for the purpose of ascertaining and determining all claims, demands, and liabilities against said receivers, and against the property in their possession, and to be surrendered by them, which have arisen or may arise out of their said receivership. All such claims, demands, and liabilities, if not paid by the C. & D. Railway Co. in due course, shall be made and presented by intervention in this cause, or in the causes ancillary hereto, for the purpose of being ascertained and determined in and by such proper intervention proceedings; and any orders, judgments, or decrees so rendered in such proceedings may be enforced, and shall only be enforced, against the property of the said railway company to the same extent that judgments could have been enforced if said property had not been surrendered into the possession of said company but was still in the possession of said receiver. Such intervention proceedings must be filed in this cause in this court, or in any of the circuit courts of the United States having jurisdiction in any of the ancillary causes, on or before the 1st day of January, 18—, and after that date no further intervention shall be permitted in this cause, and the rights of any claimants who shall not, on or before that date, have commenced intervention proceedings to avail themselves of the remedies herein provided for their benefit, shall cease and determine. The receivers shall advertise in daily newspapers published respectively in [*name of cities or towns*] the date of the intended delivery of the said property to the said company, and shall in said advertisement notify all claimants to present their said claims to the C. & D. Railway Co., and

if the same are not settled or adjusted, that then the said claimants shall intervene in the manner aforesaid, and within the time aforesaid, to wit, on or before the 1st day of January, 18—. The said advertisement shall be commenced within five days after the entry of this order, and shall be inserted once a week for three successive weeks.

Sixth. That nothing in this decree contained is intended to affect, or shall be construed as affecting, the status of any pending or undetermined litigation in which said receivers appear as parties. Such litigations may continue to determination in the name of the receivers, but for the use of the C. & D. Railway Co., and at its cost and expense, and with the right to that company, should it be so advised, to appear and be substituted in any such litigation.

Seventh. That on the — day of —, on the day fixed for the delivery of said properties by the receivers to the said railway company, the title or right of possession of S. M. and H. C., receivers, as fixed and determined by the certain order made in this cause, dated —, and filed —, and the said title or right of possession, as fixed and determined by certain subsequent orders made in this cause, extending and continuing the said receivership to the railroads and properties hereinbefore mentioned, shall cease and terminate.

Eighth. That the receivers' quarterly accounts and the reports of T. M., Esq., and A. P., Esq., masters, as the same have from time to time been made to this court, which receivers' and master's reports were respectively filed as follows: [*here set forth dates of filing, as, receivers' report for November and December, 1888, filed March 4, 1888, master's report thereon filed May 28, 1889*], are hereby, and each of the said receivers' and master's reports respectively, is in all things confirmed and approved, the parties having expressly waived the right under the rules to file objections thereto.

Ninth. That the receivers shall file an additional report containing statement of the receipts and disbursements from

the 1st day of April, 18—, to the time of the delivery of the property aforesaid, to wit, July 1, 18—, and simultaneously with its submission to the master mail a duplicate of such report to the defendant, the C. & D. Railway Co., to its New York office, and thereupon, without further order, said report shall stand referred to the master heretofore appointed in this cause, and he shall forthwith proceed to pass upon the same and report to this court. Within five days after such report of the master has been filed, objections, if any thereto, shall be filed, and, if no objections are filed thereto, the same may be submitted to the court without further notice; and if and when approved, the said receivers shall be finally discharged as to an accounting with the C. & D. Railway Co., and the other companies hereinbefore mentioned, and their bonds cancelled and discharged.

Tenth. That the C. & D. Railway Co., and the said receivers, S. M. and H. C., may apply at the foot of this decree for such other and further relief as may be just.

J. S.,

Circuit Judge.

We hereby consent to the entry of the foregoing decree.

The A. B. Co.,

By X. & X., Solicitors.

M. P. Railway Co.,

By Z. & Z., Solicitors.

No. 312.

**Assignment by Railway Receivers of Choses in Action,
etc., on the Surrender of the Property.**

Know all men by these presents:

Whereas, we, S. M. and H. C., receivers of the C. & D. Railway, duly appointed and acting as such under certain orders and decrees made in a certain suit in equity pending in the circuit court of the United States for the ——— district of ———, wherein the A. B. Company is plaintiff and the C. & D.

Railway Company and others are defendants, and also under certain orders and decrees made in certain ancillary causes between the same parties pending in the circuit court of the United States for [*name the courts,*] have been ordered and directed by the certain order entered in said main cause in the circuit court of the United States for the district of —, on the — day of —, to deliver at the hour of noon on the 1st day of July 18—, to the C. & D. Railway Company all the railroads and other property of the C. & D. Railway Company, the D. & W. Railway Company, [*etc., naming all the companies,*] wheresoever situated, whereof they are in possession as receivers under and pursuant to the orders of the courts hereinbefore referred to; and,

Whereas, by said order of the — day of —, said receivers were directed simultaneously with the delivery of the aforesaid railroads and property, to assign and transfer to the C. & D. Railway Company all of the assets, uncollected accounts, and choses in action of the said C. & D. Railway Company, or of either of the before-mentioned railroad companies, remaining in their hands and which have accrued to them as such receivers from the possession and operation of said lines of railway, or either of them; and

Whereas, orders have been entered in each of said ancillary suits between the same parties in the above-named circuit courts of the United States for, [*naming them,*] expressly approving and confirming said order of said circuit court of the United States for the — district of —, of date, —.

Now, therefore, in consideration of the premises, and pursuant to the orders and directions of the courts made as hereinabove stated, we, the said S. M. and H. C., receivers of the C. & D. Railway (duly appointed and acting as such by virtue of the orders and decrees in the aforesaid suits in the above-mentioned courts), do hereby assign, transfer, and set over to the C. & D. Railway Company all and singular the assets, uncollected accounts, and choses in action of the said C. & D. Railway Company, the D. & W. Railway Company, etc.

[*naming them,*] remaining in our hands at the date of the delivery of said railways and properties by us to the said C. & D. Railway Company as aforesaid, and which have accrued to us as receivers from the operation and possession of said lines of railway or either of them.

This assignment to become effective at the hour of noon on the 1st day of July, 18—, simultaneously with the delivery of the possession of the railroads and properties of the foregoing companies to the C. & D. Company as required by the orders and decrees of the courts hereinabove referred to.

In witness whereof we have hereunto signed our names and affixed our seals this — day of —, 18—.

S. M. [*Seal.*]

H. C. [*Seal.*]

[*Acknowledgment, see No. 313.*]

No. 313.

Acknowledgment to Assignment by Receiver.

The United States of America,
State of —, County of —, ss.

Be it remembered, that on this — day of —, before me, E. G., a notary public, duly commissioned, qualified, and acting in and for the county and state aforesaid, came S. M., one of the receivers of the C. & D. Railway, and who is personally known to me to be the identical person described in, and who executed and signed, the foregoing instrument of writing, and duly acknowledged that he executed the same as his free act and deed for the purposes and consideration therein expressed.

In witness whereof, I have hereunto set my hand
[*Seal.*] and affixed my official seal the day and year
last above written.

My commission expires on the — day of —, 1893.

E. G., Notary Public.

(Similar acknowledgment for other receiver.)

No. 314.

Advertisement of Railway Foreclosure Sale.

For form, see Beach's Modern Equity Practice, p. 1123.

No. 315.

Decree of Foreclosure and Sale of a Railway.

For form, see Beach's Modern Equity Practice, p. 1185.

ANCILLARY PROCEEDINGS.***No. 316.**

Ancillary Bill. In re Receivers for a Manufacturing Company where Receivers were Appointed by a State Court before a Federal Court took Jurisdiction.

[*Caption.*]

To the honorable Judges of the Circuit Court for the ——— district of ———, sitting in equity:

A. B., a citizen of the state of ———, and residing in the township of ———, in said state of ———, on behalf of himself and all other creditors and stockholders of the C. D. Company, defendant herein, and who may hereafter become parties to this suit and contribute to the expenses thereof, brings this bill of complaint against the C. D. Company, a corporation organized and existing under the laws of the state of New Jersey and citizen of the said state of New Jersey, and respectfully shows to the court as follows:

First. That your orator, A. B., is and was at the date of the commencement of this suit a citizen of the state of ———, residing in the township of ———, and was, at said date, and still is, a shareholder of the C. D. Company, and that the par and also the market value of the capital stock so held by the said party as aforesaid is and was at the date of the commencement of this suit and at all times of greater value than ——— thousand dollars.

That the C. D. Company is a corporation duly incorporated and existing under the laws of the state of New Jersey, and is and at all times has been a citizen of said state of New Jersey, located and carrying on business in said state.

*As to jurisdiction, see Foster's Fed. Prac., Sec. 21, and Beach's Modern Eq. Prac., Sec. 718, and note.

That said company was duly organized under an act of the legislature of the said state of New Jersey, entitled, "An act concerning corporations," dated April 7, 1875, and the several supplements thereof, and by a certificate of organization bearing date of the — day of —, 1887, and recorded on the — day of —, 1887, in the office of the clerk of the county of —, and afterwards on the same day filed with the secretary of state at Trenton, in said state, and that the principal office of the said corporation is located within the county of —, in said state. That the authorized capital of said corporation as fixed by the said certificate is — dollars, divided into — hundred shares of the par value of — hundred dollars each, and that the said stock was thereafter increased to the sum of — million dollars, of which — million dollars is preferred stock and — million dollars common stock, all of which is now outstanding.

Second. That the objects for which the said corporation was formed are to manufacture and sell [*cordage and binder twine*] and similar commodities, and for the carrying on of such similar business as more fully appears by reference to the certificate of organization, a true copy of which is annexed to this bill and marked "Schedule A," and made a part of this bill of complaint.

That soon after the organization of said corporation it entered upon the manufacture and sale of [*cordage and binder twine*] and such other business as is authorized by said certificate of organization, and has since such time prosecuted the same in the several states of New Jersey, New York, and Ohio, in all of which states it is now operating [*cordage and binder twine*] mills.

That the said corporation has real or personal property in all of the said states, and is now largely engaged in active manufacturing in each of the said states, employing in all a number of persons amounting to — or thereabouts, and operating directly or indirectly a number of cordage mills.

Third. On information and belief, on the — day of —, 1893, the payment of a debt of — dollars, due on

demand, was demanded of the said C. D. Company, and remained unpaid and default existed in the payment thereof, the said corporation not having sufficient funds to pay the same, and other debts aggregating — dollars or thereabouts on the — day of —, 1893, will become due, which said corporation is unable to pay. That the further debts will mature within a few days to the amount of several hundred thousand dollars, and that during the entire month of — debts will mature, aggregating in all — dollars.

That in the months of June, July, August, and September, other large indebtedness on commercial paper and otherwise will mature, exceeding in all — dollars.

That the corporation is without funds to pay the debts maturing at the present time, and will make default in payment of such other debts accruing within a few days, and that in the present situation of affairs it is not possible to pay the same.

That the assets of the corporation, which are valuable, are not available, either for the payment of its debts or for the raising of money to pay the same.

That the corporation is unable to meet its obligations as they mature, and has no prospect at the present time of meeting the same or of resuming its usual business, and that the corporation is insolvent.

Fourth. Your orator further says that the assets of the corporation consist of [*cordage*] mills owned or leased in the several states hereinabove mentioned, together with the raw stock in process of manufacture, and manufactured stock, and book accounts and bills receivable the greater part of all of which are scattered through various states, and the same are likely to be attached by creditors without the state of New Jersey on the ground that the corporation is a foreign corporation, and that unless a receiver is appointed for the equal protection and benefit of all creditors, attachments will be issued and preferences obtained by some to the injury of the general creditors of the company, and, moreover,

certain obligations mature in connection with the various mills of the company, which can not now be paid, which properties are necessary to the operations of the company, and which properties otherwise would be lost.

And your orator further alleges on information and belief, that on the — day of —, in the year 1893, a certain suit was commenced in the court of chancery in the state of New Jersey, a court of record and having jurisdiction of the parties and the subject-matter, and at the domicile of the corporation; that in said suit J. W. was plaintiff, and the C. D. Company, defendant, and in and by the bill of complaint in said suit, it was averred that the said corporation was insolvent, and it was prayed, among other things, that a receiver might be appointed according to the statutes of the state of New Jersey in such case made and provided, and that the said corporation shall be declared insolvent, and that said receiver so to be appointed should thereupon take possession of the goods, property and chattels of the said C. D. Company, and proceed to realize and dispose of the same, and that said corporation and its officers should be restrained from collecting or receiving such debts or from assigning or transferring the property, to all and singular the allegations in which bill, references are hereby had, as if the same, and each of the allegations were incorporated at length herein.

That thereupon the said bill was duly filed as aforesaid, and application in due form to the chancellor of the state of New Jersey, having jurisdiction for the appointment of a receiver or receivers, and that the said case came on, and was duly heard by his honor, the chancellor, pursuant to the statutes of the state of New Jersey, the said corporation being present in court, and requesting such appointment, and such proceedings were had therein that on the — day of —, 1893, it was duly adjudged, found, decreed, and ordered by the said court of chancery of the state of New Jersey, that the said company had become insolvent, and that an injunction be issued to restrain said company and

its officers from exercising any privileges and franchises and from taking or dealing with the assets of the said company, or from transferring the same, except to the receivers hereinafter named, and that S. M., of Jersey City, in the state of New Jersey and H. C., of the city, county, and state of New York, were in due form of law appointed receivers of the said C. D. Company, with full power and authority to collect, receive, or to take unto their possession, all and singular the property, real and personal, belonging to said company, to dispose of the same, and to deal therewith as in such order is specifically provided, and it was further provided therein that the said receivers should give a bond to the said chancellor for the faithful performance of their several duties, and for the obedience of such orders as he, from time to time, may make, in the sum of — dollars, duly approved as in such order specified by a special master of the said court.

That thereupon the said S. M. and H. C., duly thereafter took the oath of office, as such receivers, as is prescribed by the statute, and each duly thereafter executed his bond as prescribed in such order, in the said sum therein named, which bond was thereafter duly approved in the form required by such order and duly filed as required by law, and that the said receivers entered upon the performance of their duty and are now in the possession of the assets and property of the said C. D. Company, and the said order of the court of chancery is now in full force and effect. A copy of all the proceedings in the said suit hereinabove mentioned is attached hereto, marked "C," to which your orators refer, as if herein specifically stated at length.

Your orator further alleges that from the nature of the business and the necessity of intelligent mutual co-operation in the several states, it is highly desirable that the same receiver, if possible, should act in each jurisdiction.

Fifth. Your orator further alleges that on the — day of —, 1893, he commenced in the circuit court of the

United States, for the — district of —, a court of record, and having jurisdiction of the parties and the subject-matter, a suit wherein the C. D. Company was defendant, and wherein substantially the same allegations were made as were made in the New Jersey suit, hereinbefore referred to, and wherein it was stated that such suit had been begun in New Jersey, and S. M. and H. C. had been appointed therein as receivers, and prayed that the same receivers might be appointed in said suit in the circuit court of the United States for the — district of —. That, thereafter, on the said — day of —, an order was made by the Hon. J. S., circuit judge, appointing said S. M. and H. C. receivers of said C. D. Company.

A copy of said order and the bill of complaint in said suit, and of the affidavits and exhibits referred to in said order, which exhibits include the bill of complaint in the suit in New Jersey, and an order appointing receivers in said suit, and of the affidavit used therein, is attached hereto marked "A."

Sixth. Your orator further shows that on the — day of —, 1894, he commenced a suit in the circuit court of the United States for the — district of —, against the C. D. Company, making substantially the same allegations in said bill as were made by him in the bill filed in the suit in the circuit court for the — district of —, and supporting said allegations by substantially the same affidavits, and upon said bill and affidavits the Hon. H. L., circuit judge, made an order in all respects similar to the order made by the Hon. J. S., above referred to, and in said order appointed the said S. M. and H. C. receivers.

Your orator further alleges that from the nature of the business of said C. D. Company, and from the fact that the said S. M. and H. C. have been appointed receivers in three courts, and the necessity of intelligent mutual co-operation in the various states wherein assets of said company are situated, it is highly desirable that the same receivers, if possible, should act in all the jurisdictions.

Seventh. Inasmuch, therefore, as your orator has no adequate remedy at law, and can only have relief in equity, he files this bill of complaint on behalf of himself and all others similarly situated, and prays as follows:

1st. That due process of law be issued against the defendant, the C. D. Company, and that it be summoned to appear in this court, and answer this bill of complaint, but without oath, all answers under oath being expressly waived, and to stand and abide by such orders and decrees as the court from time to time may adjudge.

2nd. That the court will administer the assets of the defendant.

3rd. That the court will forthwith confirm the appointments heretofore made of S. M. and H. C. as receivers of all and singular the property of the C. D. Company, and will appoint receivers of the property and assets of the defendant, the C. D. Company, real and personal, together with all the equipment, property, material, supplies, and other assets of every description, wherever situated, together with all leaseholds, rights, and contracts, with authority to maintain and carry on the business under the direction of the court, and that the said C. D. Company, its officers, agents, and employees, be forthwith required and directed to deliver up to such receivers so appointed all and singular each and every part of the said property wherever situated, and that the officers, directors, managers, and agents of the said C. D. Company, and each of them, be enjoined from interfering in any way with the possession and control of the said receivers, and that they be directed forthwith to execute proper transfer and assignments to such receivers so appointed, and all and singular such assets, real and personal, wherever situated.

4th. That each and every of the creditors of said corporation be restrained and enjoined from interfering with the said property and assets of the company.

5th. That the plaintiff may have such other and further relief as the court may deem proper and necessary.

R. X.,
Solicitor for Plaintiff.
S. X.,
of Counsel.

[*Verification. See No. 85.*]

No. 317.

Ancillary Bill for Foreclosure of Railway.

[*Caption as in No. 67.*]

ANCILLARY BILL.

Your orator, the A. B. Trust Company, a corporation created by and existing under the laws of the state of —, and a citizen and resident of said state, shows unto your honors that it has already filed in the circuit court of the United States for the — district of —, the court having jurisdiction of the C. & D. Railway Company, a bill of complaint against said C. & D. Railway Company, a corporation having its principal office in the state of —, and a citizen and resident of said state of —, and against the M. P. Railway Company, a corporation existing under the laws of the state of —, and citizen of said state of —, seeking for the foreclosure of a certain indenture of mortgage or deed of trust, dated —, known as the general consolidated mortgage of the said C. & D. Railway Company. That a portion of the line of railway and property owned by the said C. & D. Railway Company, and subject to the lien of said general consolidated mortgage, is in this district and within the jurisdiction of this court.

Your orator respectfully refers to said bill of complaint for a more particular statement of the contents thereof, and for the terms and conditions of the said general consolidated mortgage, and your orator files herewith a true copy of said

bill of complaint, and prays that your honors will take the same as a part of this ancillary bill; your orator further shows that all the statements contained in said bill are true, as it is informed and verily believes, and it repeats the same herein.

And your orator makes the same persons defendants in this case that are named in said bill filed as aforesaid, and prays process against said defendants as in said bill they have already prayed.

And your orator prays that your honors will make such orders and decrees preliminary and final as are prayed for in said bill by your orator in the circuit court of the United States for the — district of —, and that your honors will also make all such other and necessary orders, judgments, and decrees as may be required in aid of said bill, and that your honors will take ancillary jurisdiction with the said circuit court of the United States for the — district of —, and will give your orator all the relief which may be necessary to accomplish the purposes of filing said bill.

And your orator prays in all respects as in said bill set forth, and prays such other and further relief as the nature of the case may require and to your honors seem meet.

X. & X.,

R. X.,

Solicitors for Plaintiffs in said Bill.

F. L.,

of Counsel.

No. 318.

Supplemental Ancillary Bill for Foreclosure of Railway.

[*Caption.*]

Now comes the A. B. Trust Company, plaintiff in the above-entitled and numbered cause, and brings, with the leave of the court first had and obtained, this, its supplementary ancillary bill to the original ancillary bill filed by it in this cause on the — day of —, and making all the averments and showing unto your honors the same facts which are set

forth in said original ancillary bill, further shows and alleges:

That since the filing of said original ancillary bill the Hon. J. S., judge of the circuit court of the United States for the — district of —, in the — circuit, to wit, on the — day of —, made his certain decree in the case of the A. B. Trust Company, Trustee, Plaintiff, *vs.* C. & D. Railway Company and M. P. Company, Defendants, referred to and set forth in said original ancillary bill filed herein, ordering, adjudging, and decreeing that S. M. and H. C. be appointed receivers of the property of the C. & D. Railway Company, covered by the mortgages made by the said defendant, which are sought to be foreclosed in the said original bill of the A. B. Trust Company, plaintiff, with power, among other things, to take possession of all the said mortgaged property, and to operate, and cause to be operated, the said railroad mortgaged as aforesaid, and to preserve and protect all of the said mortgaged property, acting in all things under the order of the said honorable circuit court of the United States for the — district of —, or of such other courts as may entertain jurisdiction of parts of the said mortgaged property as ancillary to the jurisdiction of said circuit court of —; and with leave to the plaintiff and defendants, and each of them, to apply to any other United States circuit court for such order or orders in aid of the primary jurisdiction vested in said circuit court of — in said cause as may have ancillary jurisdiction therein. A certified copy of which order is attached hereto, and made a part hereof; and plaintiff further shows and alleges that said S. M. and H. C., named as receivers aforesaid, have qualified as such, in the manner required by the terms of said decree of date, —, and on the — day of —, took possession of the said property, and are now operating and causing to be operated the said railroads, mortgaged as aforesaid, including such property and railroads as are situated within the state of —.

The plaintiff now renewing its prayer made in said ancillary bill filed on the — day of —, prays that your honors

will make such orders and decrees preliminary and final as are prayed for in said bill by plaintiff in the circuit court of the United States for the — district of —, and that your honors will also make such other and necessary orders, judgments, and decrees as may be required in aid of said bill, and that your honors will take ancillary jurisdiction with the said circuit court of the United States for the — district of —, and will give plaintiff all the relief which may be necessary to accomplish the purposes of filing said bill.

And plaintiff prays in all respects as in said bill set forth, and prays such other and further relief as the nature of the case may require, and to your honors seem meet.

X. & X.,
Solicitors for Plaintiff in said Bill.

No. 319.

Decree Taking Ancillary Jurisdiction.

[*Caption.*]

On this — day of —, came on to be heard the original and supplemental ancillary bill filed by plaintiff in this cause, and the court having considered the same, and it appearing to the court that the A. B. Trust Company, trustee, plaintiff herein, has already filed in the circuit court of the United States for the — district of —, the court having jurisdiction of the C. & D. Railway Company, a corporation having its principal office in the state of —, a bill of complaint against said C. & D. Railway Company and against the M. P. Railway Company, a corporation existing under the laws of the state of —, and of said state of —, asking for the foreclosure of a certain indenture of mortgage, dated —, known as the general consolidated mortgage of the said C. & D. Railway Company, a true copy of which bill of complaint is now on file in this cause. And it further appearing that in said cause now pending in the said circuit court of the

United States for the — district of —, the Hon. J. S., United States circuit judge for the — circuit, including said — district of —, on the — day of —, made his order and decree sustaining plaintiff's application for a receiver, and afterwards, to wit, on the — day of —, made his further order and decree, naming and appointing S. M. and H. C. receivers of the property of the C. & D. Railway Company, covered by the mortgages made by the said company which are sought to be foreclosed in the said original bill of the A. B. Trust Company, plaintiff, with certain powers and under certain instructions, as fully appears in said order, a certified copy of which is attached to the plaintiff's supplemental ancillary bill filed herein; and

It further appearing that a portion of the line of railway and property owned by the said C. & D. Railway Company, and subject to the lien of said general consolidated mortgage, is in this district and within the jurisdiction of this court, and that by the terms of said order of date —, said plaintiff was authorized to apply to any other United States circuit court of competent jurisdiction for such order or orders in aid of the primary jurisdiction vested in said United States circuit court for the — district of — as may take ancillary jurisdiction of said cause; and

It further appearing that the said S. M. and H. C. have qualified as such receivers by taking and subscribing the oath of office and executing and filing bond in the manner and according to the terms of the ninth paragraph of said order and decree:

Now, the court being fully advised, and being moved thereto by the solicitors of the plaintiff,

It is ordered, adjudged, and decreed that this court take ancillary jurisdiction with the circuit court of the United States for the — district of — in said cause now pending in said court, wherein the said A. B. Trust Company, trustee, is plaintiff, and the said C. & D. Railway Company and said M. P. Railway Company are defendants.

It is further ordered, adjudged, and decreed that the said order made by the said circuit court of the United States for the — district of —, of date —, sustaining the application of plaintiff for a receiver, and also the said order and decree of said court made on the — of —, naming and appointing S. M. and H. C. receivers of the property of the C. & D. Railway Company, covered by the mortgages made by the said company, which are sought to be foreclosed in the original bill of the A. B. Trust Company, with certain powers and under certain instructions, be and the same are hereby ratified, approved, and confirmed, and the said S. M. and H. C. are hereby vested with the same powers, rights, and privileges as are conferred by said order of said circuit court of the United States for the — district of —, of date —, over that portion of the line of railway and property owned by the said C. & D. Railway Company, subject to the lien of the mortgages made by said company sought to be foreclosed as aforesaid, as is in this district and within the jurisdiction of this court. And the said receivers having already taken and subscribed the oath of office, and executed bond in the manner prescribed by the order and decree of said circuit court of the United States for the — district of —, of date —, they are hereby authorized to take possession of said property and to act as such receivers without taking further oath of office or executing further bond.

It is further ordered and decreed that the plaintiff cause to be filed in this court certified copies of all orders of a general nature in any way affecting the said property situated within the jurisdiction of this court made by the said circuit court of the United States for the — district of — in said primary cause pending in said court, for the information of the court and all persons who may be interested in said cause.

It is further ordered that the clerk of this court enter on the minutes of the court the copy of the said order of the said circuit court of the United States for the — district of —, of date —, immediately following the entry of this order and decree.

A. P.,
Circuit Judge.

No. 320.**Order Appointing Commissioner to Hear and Report Claims.**

[*Caption.*]

It having been represented to the court that claims are arising in — against the receivers appointed and confirmed in this case, growing out of the operations of the railway property in — for stock killed, personal injuries, damages to freight, damages for short delivery, etc.; and it appearing to the court that such claims will constantly arise during the pendency of the receivership in this case, and that such claims should be adjudicated, settled, and paid without requiring the parties interested to seek relief from the circuit court of the United States in —, having original jurisdiction:

It is therefore ordered by the court that E. M., Esq., be and he is hereby appointed special master commissioner in chancery for this cause; and

It is further ordered that all claims for damages of every kind that may arise against the receivers, growing out of their operation of the C. & D. Railway in —, may be filed and presented to said commissioner, who shall examine and report thereon in due course.

That the special master is directed to give reasonable public notice of this order, and is authorized to hold sessions pending examination of claims at such points as he may designate.

He shall report his conclusions to the court from time to time, and such reports shall stand confirmed, unless excepted to within thirty days from the filing thereof, upon proper order entered according to the rules in the chancery order book.

Dated —.

A. P.,
Circuit Judge.

No. 321.

Oath of Special Master Commissioner.

[Caption.]

I, E. M., having been appointed special master commissioner in chancery in the above-entitled cause, do solemnly swear that I will faithfully and impartially discharge and perform all the duties incumbent upon me as such special master in chancery, according to the best of my skill and ability, agreeably to the constitution and laws of the United States; so help me God. E. M.

Subscribed and sworn to before me this — day of —, as witness my hand and official seal at —.

[Seal.]

C. H.,

United States Commissioner — District of —.

No. 322.

Order to File Amendment and Extending Receivership.

[Caption.]

This cause came on to be heard this — day of —, upon the application of the plaintiff for leave to file its amendment to its bill of complaint filed herein heretofore in this cause :

Whereupon, the court being fully advised thereof, said application is hereby granted, and the clerk of the court is directed to file the same as of the date of this order. And upon application of the plaintiff it is further

Ordered and decreed that the receivership of S. M. and H. C., appointed under a decree heretofore made in this cause, be and the same is hereby extended to and over all the railway and property of the defendants [*name the railways under the control of the defendants over which the receivership is extended*]; and that the said S. M. and H. C. be and they are hereby appointed receivers of all said railways and the properties thereof, with all the powers and authorities men-

tioned in and subject to all the terms and conditions of said decree appointing them receivers in this suit.

And the said receivers are hereby authorized to defend any action pending, or which may be brought, seeking to establish claims, liens, or demands against the C. D. Company and the above named railway companies, or either of them, or the property of either of them, and to prosecute any action already brought against any corporation or person for the recovery of any moneys or property due said railway company or either of them.

A. P.,
Circuit Judge.

No. 323.

**Order that Receivers Give Notice to Stockholders by
Publication.**

[*Caption.*]

And now, this — day of —, 1893, come S. M. and H. C., receivers of the property of the C. D. Co., appointed and confirmed by an order of this court made in this cause on the — day of —, 1893, and present their petition, verified the — day of —, 1893, upon consideration whereof it is by this court hereby

Ordered that the creditors of the C. D. Co. bring in and present to said receivers, in writing, their several claims and demands, and make proof thereof upon oath to the satisfaction of the said receivers on or before the — day of —, 1893, and in default thereof that the said creditors be debarred from participating in any dividend or distribution of the assets of said corporation which may be made by the receivers.

And it is further ordered that the receivers give notice of the foregoing order by causing such notice to be published in the [*name of paper*], a daily newspaper published in the city of —, once a week for the space of four weeks, the first publication to be made within ten days from the date of this order.

Dated —.

J. S.,
Circuit Judge.

No. 324.**Notice of Petition by Receivers.**

[*Caption.*]

Notice to A. B. Trust Company and the C. & D. Railway Company, or their Solicitors of Record :

You, and each of you, are hereby notified that the petition of S. M. and H. C., receivers of the C. & D. Railway, a copy of which is hereto attached and made a part hereof, will be presented in the above-entitled cause to the above-named court, or to one of the judges thereof in chambers, at the city of —, on the — day of —, at 10 o'clock in the forenoon of that day, or so soon thereafter as the said court or judge may hear the same, and that said receivers will ask the order of the court thereon at that time. Z. & Z.,

Solicitors for S. M. and H. C., Receivers of the C. & D. Ry.

No. 325.**Petition for Order Limiting Time to Present Claims, etc.**

[*Caption.*]

The petition of S. M. and H. C., receivers of the C. D. Co., respectfully shows to the court :

That on the — day of —, 1893, by a certain order or decree of the chancellor of the state of New Jersey, upon a bill filed by J. W. against the C. D. Co., a corporation duly organized and existing under the laws of the said state of New Jersey, showing that said corporation was insolvent, and was not about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders, your petitioners were duly appointed receivers of the said company, with power to receive or take into their possession all property of the company of whatever nature, and with other powers and duties in said order set forth, and that they duly qualified and gave the bond required by said court and entered into the possession of the property of said corporation as such receivers.

That on the —— day of——, 1893, upon a bill filed in this court in the above-entitled suit, setting forth the insolvency of said corporation, and the appointment of your petitioners as receivers by the chancellor of New Jersey, as aforesaid, your petitioners were also appointed and confirmed receivers of this court, of all and singular the property of said company, with the powers and duties in said order prescribed ; and your petitioners duly qualified as such receivers, as in said order directed, and entered into the possession of all the property of said corporation, and have since been and now are engaged in the discharge of their duties as such receivers, under the orders and decrees aforesaid.

Your petitioners show that they have been appointed and confirmed receivers of the property of said C. D. Co. by the decrees of the circuit courts of the United States in and for the —— district of —— [*naming all of the courts in which proceedings have been had*], all of the foregoing appointments being ancillary to the said receivership in the state of New Jersey, the domicile of the said corporation.

Your petitioners further show that on the —— day of ——, 1893, an order was made by the chancellor of New Jersey, directing the creditors of the said C. D. Co. to bring in and present to the said receivers, in writing, their several claims and demands, and to make proof thereof upon oath to the satisfaction of the said receivers within three months from the date of said order, and to cause notice of such order to be published and made as therein provided, such publication to be commenced and notices mailed within ten days from the entry of said order, as by said order, a copy of which is hereunto annexed, marked "A," will more fully appear.

That by a further order of the said chancellor, made the —— day of ——, 1893, the time within which the said creditors of said corporation should bring in and present to the said receivers their several claims and demands, and make proof thereof, as provided in said order of the —— day of ——, 1893, aforesaid, was extended to the —— day of

—, 1893, and the publication required by said order to be made was directed to be begun within ten days from the said — day of —, 1893, and it was directed that the mailing of notices to creditors required by said order might be done at any time before the expiration of said month of —, as by said order of the — day of —, 1893, a copy of which is hereto annexed, marked "B," will more fully appear. Publication of the notices to present claims has been commenced by your petitioners, pursuant to the terms of said order of the — day of —, 1893, a copy of said notice being hereto annexed, marked "C," and copies thereof will be mailed to all the creditors of said corporation known to your petitioners during the present month, as in said order directed.

Your petitioners therefore pray that, to conform the proceedings in this court to those in the court of chancery of New Jersey, this court will make an order in terms similar to those of the chancellor of New Jersey aforesaid, limiting the time within which the creditors of said company shall bring in and present their several claims and demands, and directing notice of such order to be published in such newspaper as this court may direct, and that in default of presentation of such claims pursuant to such order and notice, the said creditors be debarred from participating in any dividend or distribution of assets of said corporation which may be made by the receivers.

And your petitioners will ever pray, etc.

Y. & Y.,

Solicitors for Receivers.

S. M.,

H. C.,

Receivers.

[*Attach exhibits "A," "B," and "C."*]

No. 326.

Verification of Above Petition.

State of —,

County of —, ss.

S. M. and H. C., the receivers of the C. D. Co., and as such petitioners in the foregoing petition named, being severally

duly sworn, say that the facts set forth in the foregoing petition by them subscribed are true.

S. M.

H. C.

Subscribed and sworn to before me this — day of —, 1893.

[Seal.]

J. N.,

Notary Public.

No. 327.

Petition of Intervention.

[Caption.]

To the Honorable Circuit Court of the United States for the — District of —:

Your petitioner, B. F., who resides in —, in the county of —, in the state of —, praying for leave to intervene in the the above-styled and numbered cause, and for other orders, respectfully represents to the honorable court that on, to wit, the — day of —, 1894, prior to the order of this honorable court placing the mortgaged property of the said C. & D. Railway Company into the control and possession of the receivers, S. M. and H. C., and prior to the order of the honorable circuit court of the United States for the district of — placing such property in the control and possession of said receivers, the intervenor herein, said B. F., instituted suit in the justice's court for precinct No. 1, in — county, —, against the T. & H. Railroad Company, on a claim of — dollars for damages for material taken and appropriated by the said C. & D. Railway Company in the construction and building of its said railroad; that the T. & H. Railroad Company is and was the C. & D. Railway Company constructing, operating, owning, and controlling under the said name of the T. & H. Railroad Company, a line of railway called the T. & H. Railroad, and running from T., in — county, —, through S, in — county, —, and into — county, —, on in the direction of H., in — county, —, together with a tap or spur running from said town

of S, in said — county, to the town of L., in the county of —, state of —. That during the pendency of said suit in said justice court said property, known as aforesaid as the T. & H. Railroad, was by order of the circuit court of the United States for the district of — and by order of this honorable court made in this cause, placed in the possession and control of said S. M. and H. C. as receivers as aforesaid. That during the pendency of said suit in said justice court, and after the said order appointing said S. M. and H. C. as receivers as aforesaid, placing said T. & H. Railroad in their possession, in this cause said S. M. and H. C., receivers, were duly served with citations in terms of law to appear and answer the suit of the said B. F. in said justice court, and thereafter, to wit, on the — day of —, said service of citation on said receivers being perfect and complete, said justice court, at and during its regular term thereof, gave judgment in favor of the said B. F. for the sum of — dollars, and for costs of suit, which said costs amount to the sum of — dollars against the said T. & H. Railroad Company and against S. M. and H. C., receivers; and said judgment declares and establishes said sum, together with said costs, as a charge and lien on the earnings of the said T. & H. Railroad Company.

And this intervenor says said judgment is a lien of the sixth class on the earnings of said C. & D. Railway, and prays an order of this honorable court conferring the same as such lien and for the payment thereof by said receivers.

Your petitioner attaches hereto, marked "Exhibit A," a true copy of said judgment of said justice court, certified to as being true and correct by S. H., said justice trying said cause, accompanied by the certificate of W. W., clerk of the county court of — county, —, under the seal of said county court, that said S. H. is, and on the — day of —, was, a duly elected justice of the peace, and that the signature attached to said copy of judgment is the genuine signature of said justice of the peace, and intervenor asks that the same be taken as a part of this petition.

And the intervenor prays for such further or other orders respecting said claim as may seem to the honorable court equitable, proper, and necessary under the fact, and so as in duty bound will ever pray.

D. H.,

Attorney for Intervenor, B. F.

[*Attach Exhibit "A."*]

No. 328.

Certified Proceedings Before Magistrate—"Exhibit A."

B. F.

vs.

T. & H. Railroad Company.

On this — day of —, came the parties plaintiff and defendant by their attorneys and announced themselves ready for trial, and came a jury of good and lawful men of — county, to wit, J. W., and five others, who, after being duly impaneled and sworn according to law, after hearing the pleadings and evidence in the cause (counsel declining all argument), retired to consider of their verdict, and returning into open court submitted the following report: "We, the jury, find for plaintiff — dollars, amount of damages claimed. (Signed) J. W., Foreman." It appearing to the court that the defendant, the T. & H. Railroad Company, is a corporation engaged in constructing its road and operating the same in — county, —; that the said company is justly indebted to the plaintiff, B. F., for damages sustained by him from the appropriation of his earth and soil by said railroad company in the construction of the road-bed of said company in — county, in the sum of — dollars, as found by the jury; that since the institution of this suit said railroad company and corporation as aforesaid has been placed in the hands of the defendants, S. M. and H. C., as receivers; that said receivers, acting by and through their agent, C. R., and others, have possession of all the property of said corporation, and are operating said railroad and business in — county, —, and are receiving all

the earnings of said railroad company; that said S. M. and H. C., receivers as aforesaid, have been duly cited to answer the demand of the plaintiff in this cause. It is therefore ordered and adjudged by the court that plaintiff, B. F., do have and recover of and from the defendant, the T. & H. Railroad Company, and S. M. and H. C., receivers as aforesaid, the sum of—— dollars and all costs of this suit; and a lien is hereby established and fixed in the earnings of said defendant corporation, the T. & H. Railroad Company, which may now be in the hands of said receivers aforesaid, or C. R., agent of said receivers, in —— county, as aforesaid, and in the earnings of said defendant railroad company which may hereafter come into the hands of said receivers and said R., agent of said receivers as aforesaid; and said S. M. and H. C. are hereby directed out of the earnings of said railroad company coming to their hands to pay off and satisfy the judgment herein rendered in favor of said plaintiff, B. F., within thirty days from the date of this judgment. That if said receivers shall fail or refuse to pay off and satisfy said judgment herein rendered in favor of plaintiff, B. F., within the time as herein directed, then that the said C. R., so representing said receivers in —— county as aforesaid, is hereby directed to pay off and satisfy said judgment within sixty days from the date of this judgment out of any money coming to his hands, the earnings of said T. & H. Railroad Company. Upon failure of said receivers and said C. R. to pay off and satisfy the judgment herein given in favor of plaintiff, B. F., as hereinbefore directed, then let execution issue against the defendants, the T. & H. Railroad Company and S. M. and H. C., for the amount unpaid on said judgment. Done this —— day of ——.

S. H.,
J. P. C. Co.

No. 329.

Motion to Refer Intervention to a Special Master.

[*Caption.*]

In re Intervention of B. F.

Now comes B. F., intervenor, by counsel, and moves the honorable court that his petition of intervention filed in the papers of this cause on the — day of —, be referred in all things to E. M., Esq., master in chancery, for his examination and report; and intervenor with respect so prays.

D. H.,

Attorney for B. F.

No. 330.

Another Petition of Intervention.

[*Caption.*]

The Petition of the Safe Deposit Company of the city of —, State of —, Trustee:

The petition of the Safe Deposit Company respectfully shows:

First. Your petitioner is a corporation duly incorporated, organized, and existing under the laws of the state of —, and has been such since long prior to the 1st day of June, 18—.

Second. The defendant, the E. & L. River Railroad Company, was specially chartered by an act of the legislature of the state of —, entitled "An act to organize and incorporate the E. & L. River Railroad Company," which act was duly approved on the — day of —.

Third. On the 1st day of June, 18—, the said E. & L. River Railroad Company executed its mortgage to your petitioner, as trustee, to secure certain first-mortgage bonds as by said first mortgage provided. A copy of said mortgage is hereto attached, marked "Exhibit A," and made part hereof. By the terms of said mortgage the railroad of said E. & L. River Railroad Company, and all of its property then exist-

ing and to be afterwards acquired, was conveyed to your petitioner, as trustee, to secure certain mortgage bonds in said mortgage particularly described. The number of bonds authorized to be issued under said mortgage was not to exceed —, being at the rate of \$— per mile of railroad constructed at the time of the execution of the said mortgage, and a further issue of \$— per mile as additional road should be constructed in sections not less than — miles.

Fourth. The railroad of said E. & L. Railroad Company is constructed from —, via —, to —, through the counties of [*name all the counties and state*], a distance of about — miles. From — to — is a standard gauge, and from — to — is a narrow gauge.

Fifth. There have been certified and delivered, and are now outstanding, — of the bonds secured by the said mortgage, but the rights of the holders of — thereof to share in the protection of the lien of the mortgage is disputed by the holders of the remaining — bonds, as will more fully appear by reference to the sixteenth section of this petition.

Sixth. On the — day of —, the said E. & L. River Railroad Company executed and delivered to the C. & D. Railroad Company its certain deed or instrument in writing, whereby it conveyed all of its property to the C. & D. Railway Company, defendant herein. The said conveyance was made by virtue of authority claimed by the parties thereto to be conferred by section 4 of an act of the legislature of the state of —, approved the — day of —, entitled "An act in relation to the C. & D. Railway Company, late the U. P. Railway Company, Southern Branch," and also by virtue of the charter powers of the E. & L. River Railroad Company.

Seventh. On December 1, 18—, the said E. & L. River Railroad Company leased all of its lines then owned and thereafter to be acquired to the M. P. Railway Company.

Eighth. After the C. & D. Railway Company acquired the E. & L. River Railroad, the said railway company turned

over, under its lease, the said E. & L. River Railroad to the M. P. Railway Company, which was thereafter operated by the said last-named company, under the lease, as a part of the C. & D. Railway.

Ninth. On the — day of —, a suit in equity was begun in the circuit court of the United States for the district of — by The A. B. Trust Co. of —, trustee, under the mortgage made by the C. & D. Railway Company, to secure certain bonds therein described, to foreclose the said mortgage, and for the appointment of receivers for the said mortgaged property, default having been made in the payment of interest on said mortgage bonds; in which suit the C. & D. Railway Company and the M. P. Railway Company were made parties defendant, duly served and appeared. The bill of complaint and of subsequent pleadings and proceedings in the said United States circuit court for the — district of — have been, under the order of this court in this cause, filed herein, and your petitioner begs to refer thereto.

Tenth. On the — day of —, in the said cause, an order was entered appointing S. M. and H. C. receivers of the C. & D. Railway Company, including all of its properties in [*name the states,*] and including the line of railroad hereinbefore referred to as the E. & L. River Railroad.

Eleventh. On the — day of — the ancillary proceedings, in which this petition is now presented, were begun by the said A. B. Trust Company in the circuit court of the United States against the C. & D. Railway Company and the M. P. Railway Company, in each of the districts, viz., the northern, southern, and eastern, of the state of —, to foreclose the said mortgage of the C. & D. Railway to the said A. B. Trust Company, and in aid of the said suit in —, and asking for the appointment of receivers.

Twelfth. On the — day of —, an order was made in each of said courts in —, appointing and confirming the said S. M. and H. C. receivers of the C. & D. Railway Company, including all of its lines in the state of —, among which was the E. & L. River Railroad.

Thirteenth. Afterwards, on the — day of —, an amended bill was filed in the original suit in the circuit court of —, making certain other railroad companies parties defendant, among which was the E. & L. River Railroad Company, and an order was made on that day extending the receivership of the said S. M. and H. C., specifically and by name, over certain lines of road in —, among them the E. & L. River Railroad.

Fourteenth. On the — day of —, an amended bill was filed in each of the said circuit courts of the United States for —, making certain other parties defendant, among whom was the E. & L. River Railroad Company, and by an order entered in the said cause the receivership of the said S. M. and H. C. was specifically extended over certain railroads in —, and among them was the said E. & L. River Railroad.

Fifteenth. By virtue of the original orders appointing them, the said receivers, S. M. and H. C. took possession of all the lines of the C. & D. Railway Company, including the E. & L. River Railroad, on the — day of —, and have since been in possession of and operating the same, and they are now in possession of and operating said railroads by virtue of the said original orders and aforesaid orders made upon the said amended bills.

Sixteenth. That there were prepared for issue by the said E. & L. River Railroad Company, and certified by your petitioner, under mortgage dated —, [*state number*] bonds. Of this [*state number*] bonds are now outstanding in hands of owners whose title is not in dispute, and they allege that the remaining [*state number*] of said bonds were acquired by the A. B. Trust Company of New York, trustee, under the mortgage made by the C. & D. Railway Company, under such conditions that the said A. B. Trust Company is not entitled, as against them, to enforce the same as if entitled to the protection of the lien of the mortgage made to your petitioner. A copy of a notice received from the holders of certain of the bonds is hereto attached as "Exhibit B." The said E. & L.

River Railroad Company has made default in the payment of the coupons which fell due, and upon all coupons maturing subsequently thereto.

Seventeenth. Your petitioner has been requested by the said A. B. Trust Company, as the holder of [state number] bonds, and also by the holders of the said [state number] bonds, to take steps to protect the rights of the owners of the bonds secured thereby, so that the holders of all the bonds now outstanding have now united in the request that this action be taken.

Eighteenth. The mortgage of the said E. & L. River Railroad Company to your petitioner constitutes a prior and paramount lien upon all of the railroads and property of the said E. & L. River Railroad Company to any claim of the said A. B. Trust Company or the said C. & D. Railway Company, or any of the other parties to this suit, or to the said foreclosure suit in the said circuit court of the United States for the — district of —.

Nineteenth. Your petitioner further shows that in the said mortgage, made and executed by the said E. & L. River Railroad Company to your petitioner, it is provided as follows :

“In case of default of the payment of any interest upon said bond, and such default continuing twelve months, the whole principal sum mentioned in each and all of said bonds then outstanding shall, at the option of the holders of one-third in interest of the said bonds then outstanding, become due and payable, and in that event, or in case of default in payment of the principal of said bonds, or any of them, at the maturity of said bonds, the party of the second part or its successor or successors in this trust shall foreclose this mortgage by legal proceedings, and sell, or cause to be sold, the said railway and property, and all the rights, privileges, and franchises, and all the appurtenances herein conveyed, as above expressed, including lands and land scrip, as well as all the benefit of the equity of redemption of the party of the first part in and to the same, with the benefit of the franchise

aforesaid, which sale shall be at public auction in the city of New York, or at —, on previous notice of the time and place of such sale by advertisement, published not less than three times per week for ten weeks, in at least two newspapers of general circulation published in the city of New York, two in the city of —, and two in the state of —, and in such other places as may be required by law."

Wherefore, your petitioner prays permission to file a bill to foreclose the said mortgage in the circuit court of the United States for the — district of —, at —, and for the appointment of a receiver thereunder, and for such other and further order in the premises as may be necessary to fully protect the rights of the owners of the bonds secured by said mortgage.

R. Z.,

Solicitor for the Safe Deposit Co.

[*Attach exhibits "A" and "B."*]

No. 331.

Order Granting Leave to Intervene.

ORDER.

And now this — day of —, the petition of the Safe Deposit Company being before the court, upon consideration thereof and upon motion of R. Z., solicitor for said petitioner, and W. B. appearing for the E. & L. River Railroad Company, and R. X. appearing for the C. & D. Railway Company:

It is ordered that the prayer of the petitioner be granted, and that the said petitioner have leave to file a bill to foreclose the mortgage referred to in said petition, and for other relief as prayed for in said petition.

A. P.,

Circuit Judge.

No. 332.

Petition of Intervention (in re Manufacturing Company).

[*Caption.*]

Now comes the W. D. Co., a corporation organized under the laws of the state of —, and represents to this honorable court that the said defendant and its receivers have now in their possession and control large quantities of [*state the goods, as, Manilla and New Zealand hems and the products thereof, or as may be*], the property of this company received from it by defendant for the sole and only purpose of being manufactured by said defendant into [*binder twine, or as may be*] by this company under contract in that behalf entered into on the — day of —, which hems and twine are of the value of — thousand dollars. Said property is now in large part at defendant's mills in — and —, in the state of —, the exact amount thereof in each mill this company is unable to say, because it is unable to get the required information from said company or its receivers.

There is great and imminent danger of said fibre and the twine manufactured therefrom being mixed and mingled with other fibres and twine pertaining to said company, and thus entailing great and irreparable loss upon this company.

The company avers that the means of identification are such now as that—if permitted by this court—it can recover its property in large amount. This company therefore moves this honorable court for an order for leave to bring an action, or actions, in this court or elsewhere, against said receivers, to enable it to recover its said property and prevent the imminent and impending loss aforesaid.

It further moves the court to require said company and its said receivers to make an immediate statement to this company, showing the exact whereabouts of all its said fibre and the twine manufactured therefrom, and for such other relief as equity and justice may require.

X. & X.,

Attorneys for W. D. Co.

No. 333.**Motion to Restrain Receivers in Accordance with the
above Petition.**

[*Caption.*]

The said W. D. Co. now comes and moves the court to restrain the said receivers from shipping away or delivering any binder twine in their possession within the jurisdiction of this court to any other person than to said W. D. Co. until the question can be tried as to their right to the same under the contract referred to in their said bill filed herein on the — day of —.

X. & X.,

Attorneys for W. D. Co.

No. 334.**Commissioner's or Master's Report on Intervention.**

[*Caption.*].

Special Master's Report in the matter of the claim of J. D. Bros. & Co. against the receivers of the C. & D. Railway Company:

To the Judges of said Court:

Under a general order of reference, dated —, made in this cause, providing for the examination by the special master commissioner of claims against the receivers appointed herein, to wit, S. M. and H. C., arising from their operation of the defendant railway company's property in —.

J. D. Bros. & Co., a copartnership, doing a general merchandise business at —, in the county of —, state of —, filed with me their intervening petition, complaining that on the — day of —, they shipped from — to —, in the state of —, over the C. & D. Railway, — head of beef cattle; that while said beef cattle were *en route* to — they were injured and delayed, on said railway, to intervenors' damage — dollars.

By consent of the parties I appointed the —— day of ——, at ——, to consider the matter. At which time and place appeared W. C., solicitor for the receivers, and W. B., solicitor for intervenors.

After hearing the evidence and argument of counsel, I took the matter under advisement, and now report my findings:

I find that the receivers and intervenors executed on the —— day of ——, a certain live-stock contract, whereby the former engaged to transport, as common carriers, for hire, —— head of beef cattle, the property of intervenors, from —— to the National Stockyards in the city of ——.

I find that in pursuance of this contract —— head of beef steers were delivered on the same day to said receivers at ——, and that they were in good condition and of the average weight of eight hundred and fifty pounds a head.

I find that thereafter, on the —— day of ——, while a train operated by said receivers was transporting said cattle from —— to ——, it was detained by a wreck caused by a derailment of one of its cars, at ——, for twenty-four hours.

I find that said cattle were delivered on the —— day of ——, to the consignee at the National Stockyards in ——, in bad condition, and greatly injured by the wreck and delay.

I find that the delay was unreasonable, and not without the fault of the receivers, and that if said delay had not occurred the cattle would have been delivered to the consignee on the —— day of ——, and in good condition, and that intervenors would have received a better price for them than the price offered and received by intervenors for them on the —— day of ——, the same day when they were sold.

I find that the difference between the value of these cattle at a fair valuation on these dates amounts to the sum of —— dollars.

Premises considered, I am of the opinion that intervenors are entitled to recover the difference between the price they would have received on the —— day of ——, and the price actually received on the —— day of ——.

I therefore recommend the adoption by the court of a decree to the following effect:

That intervenors, J. D. Bros. & Co. have of and from S. M. and H. C., as the receivers of the defendant railway company, the sum of — dollars, actual damages; the same to be decreed as a charge upon the current income of the receivership, and a part of the expenses thereof, and all costs in this behalf.

Respectfully submitted, E. M.,
Special Master Commissioner in Chancery.

No. 335.

Decree Confirming Master Commissioner's Report on Intervention.

[*Caption.*]

On this — day of —, came on to be heard the exceptions of intervenor M. D. to the report of the special master filed herein on the — day of —, and the same was argued by counsel, where upon consideration thereof, because it is the opinion of the court that the law is against said exceptions, it is therefore ordered, adjudged, and decreed by the court that said exceptions be, and they are hereby overruled, and the report of said special master is in all things confirmed.

A. P.,
Circuit Judge.

No. 336.

Petition of Defendant for an Order Authorizing Receivers to Deliver to it the Possession of Railway Property in their Hands.

[*Caption.*]

The petition of the C. & D. Railway Company, defendant herein, respectfully shows to this court:

First. That this is a cause ancillary to the main suit between the same parties, in the circuit court of the United States for the — district of —.

Second. That in the said main suit the C. & D. Railway Company has heretofore presented its petition praying for an order of the court requiring the receivers of the C. & D. Railway to turn over and deliver possession of the said railway and property to the said C. & D. Railway Company; and that prior to the submission of the petition the receivers filed a report, and that upon the said petition and report the court did, upon the — day of —, enter an order conformably to the prayer of the said petition, and that copies of the said petition, and of the said report, and order of court are hereto annexed and marked respectively Exhibits A, B, and C, and made a part hereof.

Wherefore your petitioner prays that the said order of the court may be spread upon the records in this court, and may be by this court confirmed and approved, and made the order of this court in this ancillary cause so far as the same may be necessary in order to protect all the rights of all the parties in interest as against the property within the jurisdiction of this court.

C. & D. Railway Co.,

By J. W., 3d Vice-President.

Attest:

[*Seal.*] H. B., Secretary.

R. X.,

R. L.,

Solicitors for C. & D. Ry. Co.

[*Attach exhibits "A," "B" and "C."*]

No. 337.

Ancillary Decree.

[*Caption.*]

It appearing to the court, by certified copy herewith filed, that in the main suit between the same parties in the circuit court of the United States for the — district of —, to which this cause is ancillary, there was duly entered, on the — day of —, the following decree: [*Set forth decree in full.*]

It is hereby ordered, adjudged, and decreed that the said decree be spread upon the records of this court, and that the said decree be and hereby is approved and confirmed, and made the decree of this court in this ancillary cause so far as the same may be necessary to protect all the rights of all the parties in interest as against the property within the jurisdiction of this court.

Dated —.

A. P.,
Circuit Judge.

No. 338.

**Ancillary Order, Confirming and Directing Sale to a
Reorganized Manufacturing Company.**

[*Caption.*]

On reading and filing the report of S. M. and H. C., receivers of the property and assets of the C. D. Co., duly verified on the — day of —, 1893, with the exhibits as in said report specified, including a copy of all the papers presented to the chancellor of New Jersey, and upon which an order was made by the said chancellor on the — day of —, 1893, and duly entered, whereby the said chancellor at the domicile of the said corporation did order, adjudge, and decree that the sale theretofore made by S. M. and H. C., receivers of the said C. D. Co., of the assets and property of said corporation to G. C., E. T., and G. H. should be ratified, approved, and confirmed, and by which order the said receivers were authorized and directed to carry out the sale; and whereas it appears that prior to the making of said order by the said chancellor of New Jersey the said receivers presented their report to him bearing the date of the — day of —, 1893, reporting the bid made by the reorganization committee for the property and assets of the C. D. Co., or for the entire property, subject to existing liens and obligations, the sum of — dollars, payable upon confirmation of sale, — dollars in cash, and — dollars in the first mortgage, six per cent. gold bonds of the U. C. Co., being a new cor-

poration formed to acquire said property and carry out the reorganization, and that they had accepted the same for the reasons set forth in their said report, subject to the approval of the court, and that thereupon it was ordered by the said chancellor that notice should be given to each and every stockholder and creditor by delivering or mailing to him a copy of the order to show cause made upon such petition, returnable upon the — day of —, 1893, why the same should not be granted, and that each and every of the said stockholders and creditors had an opportunity of appearing and of being heard thereon, and that upon the return day thereof, after such service duly made, the said chancellor did, after hearing all parties, make the order aforesaid; and whereas it appears to the court that the property of the said C. D. Co. has been sold for the highest price that could be obtained therefor, and that it is for the interest of the creditors and stockholders alike that said sale should be confirmed.

Now, therefore, on motion of Messrs. X. & X., solicitors for and of counsel with the said receivers, on hearing Messrs. Z. & Z., counsel for the receivers, it is ordered by the court that the sale heretofore made by S. M. and H. C., receivers of the C. D. Co., to G. C., E. T., and G. H., be and the same is hereby ratified, approved, and confirmed, and the said receivers are hereby authorized, ordered, and directed to grant, bargain, sell, assign, transfer, convey, set over, and confirm unto the said purchasers, as joint tenants, or to their assigns, all the real estate and personal estate, good will, choses in action, effects and assets of the said defendant corporation, the C. D. Co., for the consideration aforesaid, and upon the terms set forth in the bid made by said purchasers.

And the said receivers are hereby authorized, ordered, and directed to execute and deliver any and all deeds, bills of sale, conveyances, assignments, transfers, and other instruments whatsoever necessary, proper, or advisable for the vesting of the said property and effects so sold in the said trustees or their assigns.

And it is further ordered, adjudged, and decreed that upon the delivery of deeds and conveyances by the said receivers to the said purchasers, and upon payment of the consideration agreed upon and the performance of the conditions of the sale by said purchasers, that all the right, title, and interest of the C. D. Co. of, in, and to all real estate, personal property, good will of business, choses in action, stock, or other effects or property, or things of value whatsoever, shall be and become fully vested in the said purchasers or their assigns, fully and effectually as the said receivers may, can, or ought to convey the same, and as fully and effectually as this court can authorize or empower them to convey the same.

Dated——.

J. S.,
Circuit Judge.

PATENTS FOR INVENTION.

No. 339.

Bill in Equity for Infringement of a Patent (1).

[*Caption, as in No. 67.*]

To the Honorable, the Judges of the Circuit Court of the United States in and for the — District of —:

A. B., residing at —, in the state of —, and citizen of said state, brings this, his bill against C. D., of —, in the state of —, and citizen of said state, and inhabitant(2) of the — district of —, and thereupon your orator complains, and says:

That heretofore, on the — day of —, 1894, A. B., of —, was the true, original, and first inventor of a certain new and useful improvement in —, not known or used in this country, and not patented or described in any printed publication in this or any foreign country before his said invention or discovery thereof, and not in public use or on sale for more than two years prior to his hereinafter recited application for a patent therefor (3);

And your orator further shows unto your honors that the said A. B. being, as aforesaid, the inventor of the said improvement, and being a citizen of the United States, made application to the commissioner of patents for letters patent, in accordance with the then existing acts of congress, and having duly complied in all respects with the conditions and requisitions of said acts, on the — day of —, 1894, letters patent of the United States, signed, sealed, and executed in due form of law, for the said invention or discovery, were issued to him and numbered —.

Whereby there was secured to him, his heirs, executors, administrators or assigns, for the term of seventeen years from the — day of —, 1894, the full and exclusive right of making, using, and vending to others to be used, the said improvement, which said letters patent are now of record in the patent office of the United States, and a certified copy of which is ready here in court to be produced.

And your orator further shows unto your honors that by virtue of the premises he became, and now is, the sole and exclusive owner of said letters patent, and the inventions and improvements described therein, and of all the rights and privileges granted and secured, or intended to be granted and secured thereby. And that since he became the owner thereof, as aforesaid, he has invested and expended large sums of money, and he has been to great trouble in and about said invention, and for the purpose of carrying on the business of manufacturing and selling machines containing the said invention, and making the same profitable to himself and useful to the public; and that said invention has been and is of great benefit and advantage; and that a large number of such machines were made according to said invention, and sold by your orator to great advantage to the public; and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator; and your orator believes that he will realize and receive large gains and profits therefrom if infringements by said defendant and his confederates shall be prevented.

Yet the said defendant, well knowing the premises and the rights secured to your orator, as aforesaid, but contriving to injure your orator, and deprive him of the benefits and advantages which might and otherwise would accrue unto him from said invention, after the issuing of the letters patent, as aforesaid, and before the commencement of this suit, did, as your orator is informed and believes, without the license or allowance, and against the will of your orator, and in violation of his rights, and in infringement of the aforesaid letters patent, within the — district of —, and elsewhere in the

United States, unlawfully and wrongfully, and in defiance of the rights of your orator, make, construct, use, and vend to others to be used, the said invention, and did make, construct, use, and vend to others to be used, — machines made according to, and employing and containing said invention, and that he still continues so to do; and that he is threatening to make the aforesaid — machines in large quantities, and to supply the market therewith, and to sell the same.

All in defiance of the rights acquired by and secured to your orator as aforesaid, and to his great and irreparable loss and injury, and by which he has been and still is being deprived of great gains and profits, which he might and otherwise would have obtained, and which have been received and enjoyed, and are being received and enjoyed, by the said defendant by and through his aforesaid unlawful acts and doings.

And your orator further shows unto your honors, on information and belief, that said defendant has sold large quantities of said — machines, and has a large quantity on hand, which he is offering for sale, and has made and realized large profits and advantages therefrom; but to what extent, and how much exactly, your orator does not know, and prays a discovery thereof. And your orator says that the use of the said invention by said defendant, and his preparation for and avowed determination to continue the same, and his other aforesaid unlawful acts, in disregard and defiance of the rights of your orator, have the effect to and do encourage and induce others to venture to infringe said patent, in disregard of your orator's rights.

And your orator further shows unto your honors that he has caused notice to be given to said defendant of said infringements, and of the rights of your orator in the premises, and requested him to desist and refrain therefrom; but he disregarded said notice, and refused to desist from said infringements, and still continues to make and sell said patented machines.

And forasmuch as your orator can have no adequate relief except in this court, to the end that the defendant may be compelled to account for and pay over the income thus unlawfully derived from the violation of the rights of your orator, as above, and be restrained from any further violation of said rights, your orator prays that your honors may grant a writ of injunction, restraining the defendant from any further construction, or sale, or use in any manner of said patented machines, or any part thereof, in violation of the rights of your orator, as aforesaid, and that the — machines now in possession or use of the said defendant may be destroyed or delivered up to your orator for that purpose. And also, that your honors, upon the entering of a decree for infringement, as above prayed for, may proceed to assess, or cause to be assessed under your direction, in addition to the profits to be accounted for by the defendant as aforesaid, the damages your orator has sustained by reason of such infringement, and that your honors may increase the actual damages so assessed to a sum equal to three times the amount of such assessment, under the circumstances of the willful and unjust infringement by said defendant, as herein set forth. And your orator prays also for a provisional or preliminary injunction, and for such other relief as the equity of the case may require, and as to your honors may seem meet.

May it please your honors to grant unto your orator a writ of injunction conformable to the prayer of this bill, and also a writ of subpœna of the United States of America, directed to the said C. D., and commanding him to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem meet, and be required by the principles of equity and good conscience.

A. B.

X. & X.,

Solicitors for Plaintiff (4).

R. X.,

of Counsel (4).

[*Verification.* See No. 85.]

(1) The plaintiff may seek relief at law for damages; but the most common method is by bill in equity for discovery and injunction. As to jurisdiction of a court of equity in patent cases, see Robinson on Patents, Sec. 1061 *et seq.*, and cases cited in notes. The circuit courts have original jurisdiction of patent suits (R. S., Sec. 629, clause 9), irrespective of the value of the matter in dispute. Foster's Fed. Prac., Sec. 15; Miller-Mayee Co. *vs.* Carpenter, 34 Fed. Rep., 433. But see U. S. *vs.* Mooney, 116 U. S., 104, 107. As to commencement of bill, see 20th Rule in Equity; and as to necessary allegations in bill, see Robinson on Patents, Sec. 1106 *et seq.* See also Foster's Fed. Prac., Sec. 77.

(2) The bill must allege that the defendant is an inhabitant of the district within which the suit is brought. See Robinson on Patents, Sec. 933, note 2; Desty's Fed. Proc., Sec. 87; Act of March 3, 1887, as amended, 25 Stat. at L., 433, and Foster's Fed. Prac., Sec. 22.

(3) It has been held that bill was demurrable where it did not allege that the invention was not in public use, or on sale, for more than two years prior to the application. See R. S., Sec. 4886; Coop *vs.* Institute, 47 Fed. Rep., 899; Overman Wheel Co. *vs.* Elliott Cycle Co., 49 Fed. Rep., 859; Hanlon *vs.* Primrose, 56 Fed. Rep., 600.

(4) Must be signed by counsel. See 24th Rule in Equity. Dwight *vs.* Humphreys, 3 McLean, 104, and Roach *vs.* Halings, 5 Cranch, C. C., 637. See also note to No. 67.

The following allegations should be inserted in the bill of complaint [*see No. 339*], according to the facts:

No. 340.

Where an Assignment of the Patent has been made before bringing the Suit(1).

And your orator further shows unto your honors that on or about the — day of —, 1893, the said — by an assignment in writing, and on that day sold, assigned, and transferred unto the [*plaintiff*] the entire right, title, and interest in and to said letters patent and invention, together with all rights of recovery for past infringements arising under said letters patent, which said assignment was duly recorded in the patent office of the United States.

(1) If more than one assignment of the patent has been made, it will be necessary to repeat this allegation in the bill until the chain of title is complete.

No. 341.**Where a Reissued Patent is Sued On.**

And your orator further shows to your honors that the [*patentee*] has, for good and lawful cause, surrendered said letters patent to the commissioner of patents, and having made due application therefor, and having in all things complied with the acts of congress in such case made and provided, they were canceled, and new letters patent, which were marked "Reissue No. —," were, on the — day of —, 1894, in due form of law, issued to [*patentee*], which said mentioned reissued letters patent are of record in the patent office of the United States, and a certified copy of which are ready here in court to be produced.

No. 342.**Where the Suit is brought by the Administrator of a Patentee.**

And your orator further shows unto your honors that the [*patentee*] died intestate on or about the — day of —, 1894, and that his son, S. B., was, on or about the — day of —, 1894, duly appointed and qualified as administrator of the estate of the said —, deceased, and thus became, as such administrator, possessed of the rights granted to the said — under and by virtue of said letters patent.

No. 343.**An Allegation Setting Forth Prior Adjudication.**

And your orator further shows unto your honors that in the month of —, 1894, S. W., manufacturer of —, in the city of —, state of —, was manufacturing and selling —, embodying the invention set forth in and in infringement and violation of the rights of your orator under the said letters patent No. —; that on the — day of —, 1894, the

said A. B. brought his bill in equity in the circuit court of the United States for the — district of —, against the said S. W., and in said suit complained that the defendant had infringed and threatened the further infringement of the said letters patent No. —. [*When the fact is true, add here.* And that he thereupon moved the court for a preliminary injunction therein; that the said motion came up to be heard in said court before the Hon. J. S., judge of the circuit court, on the — day of —, 1894, on affidavits and proofs filed by the respective parties, and was argued by counsel, to wit: [*here name the counsel for the respective parties*], and that upon consideration of said proofs and arguments the court, on the — day of — 1894, ordered an injunction as prayed for, restraining the defendant from infringing the said letters patent No. —, and the said injunction was accordingly granted and issued]; that the said defendant filed his answer to the said bill of complaint, and the said cause came on to be heard on pleadings and proofs, and was argued on the — day of —, 1894, before the Hon. J. S., judge of the circuit court, by counsel for the respective parties, viz.: [*name them*], and on the — day of —, 1894, the court ordered a decree for the plaintiff, affirming the validity of the said letters patent No. —, and a perpetual injunction as prayed for, restraining the defendant from infringing said letters patent, and said perpetual injunction was accordingly granted and issued.

No. 344.

A Bill in the Nature of a Supplemental Bill. Allegation when Patent has been Assigned pending Suit (1).

And your orator further shows unto your honors that the said A. B., being vested with the title as aforesaid, and being advised that the said C. D. had infringed and was continuing to infringe upon said letters patent in this district heretofore, to wit: on or about the — day of —, 1894, filed his

bill in equity in this court against the said C. D. (being bill in equity No. —), wherein he shows the premises set forth herein, and charged such infringement of said letters patent by said defendant and of the rights therein vested in the said A. B., and prayed an injunction, and an accounting, and other suitable relief in respect thereto, as are more fully set forth in the bill of complaint in said cause now on file.

And your orator further shows unto your honors that pending the said suit, viz.: that on or about the — day of —, 1894, the said A. B. transferred his entire right, title, and interest in and to the said letters patent No. —, and in and to all rights of action and recovery for past infringements thereof to your orator, S. T. (2), and a copy of which said assignment was duly recorded in the patent office of the United States; and that your orator now holds the entire title thereto, and to all rights of action for past infringement, as well as for the future infringement arising thereunder, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by the said A. B. had this assignment not been made.

(1) As to when such bill is proper, and the necessary allegations, etc., see Robinson on Patents, Sec. 1122; Beach's Modern Equity Prac., Sec. 512; 57th Rule in Equity; Desty's Fed. Proc., Sec. 1172; Foster's Fed. Prac., Sec. 191, *et seq.*

(2) S. T. becomes the plaintiff in the supplemental bill, in place of A. B., the plaintiff in the original bill.

No. 345.

Bill to Cancel an Interfering Patent (1).

[*Proceed as in No. 339 to the end of paragraph four, and continue as follows:*]

And your orator further shows unto your honors that he is the sole and exclusive owner of the said and heretofore re-

cited letters patent, and the inventions and improvements described therein, and of all the rights and privileges granted and secured or intended to be granted and secured thereby.

And your orator further shows unto your honors that subsequently to the issue of his said letters patent aforesaid, to wit: On or about the — day of —, 1893, defendant, C. D., wrongfully made application in the patent office of the United States for letters patent for the improvement in tension devices for fence machines invented and patented by your orator, as aforesaid, and that upon proceedings had upon the application of C. D., letters patent No. —, dated —, were procured to issue from the said patent office, purporting to grant to the said C. D., his successors or assigns, for the full term of seventeen years from the said —, the full and exclusive right to make, use, and vend the aforesaid tension device for fence machines, being in fact the invention of your orator, and the same invention which was described and claimed in his aforesaid letters patent No. —, as will more fully appear from a comparison of the said letters patent No. —, granted your orator on —, and the said letters patent No. —, granted said C. D., on —, a duly certified copy of which is ready here in court to be produced.

[*If it be true, say:*] And your orator further shows unto your honors, upon information and belief, that said application of defendant, C. D., was filed at the instance of the R. C. Co., one of the defendants herein; that the proceedings resulting in the grant of said C. D. patent No. —, were conducted by and at the expense of the said R. C. Co., and that the said R. C. Co. claims some interest therein and thereunder.

And your orator further shows unto your honors that both prior to and subsequently to the grant of his letters patent aforesaid he has invested and expended large sums of money and has been to great trouble in and about said invention, for the purpose of carrying on the business of manufacturing tension devices for fence machines, and making the same

profitable to himself and useful to the public, and that the said invention has been and is of great benefit and advantage, and that a large number of tension devices for fence machines has been made according to said invention and sold by your orator to great advantage to the public.

And your orator further shows unto your honors that the defendants are asserting title under said letters patent No. —, granted defendant, C. D., as aforesaid, and are claiming thereunder the exclusive rights granted and secured to your orator by said letters patent No. —; that the said defendants thereby have been and are inflicting great damage and injury on your orator, and will, if said wrongful acts shall not be enjoined and restrained by your honors, greatly and irreparably damage your orator.

And forasmuch as your orator can have no adequate relief except in this court, to the end that the said interfering letters patent granted C. D., as aforesaid, may be decreed by this court to be invalid, inoperative, and void, and may be ordered to be canceled, annulled, and set aside, and that the said C. D. (and the R. C. Co.) may be required to answer and disclose on oath the names of all persons whomsoever interested in said letters patent, or in the working of the said invention claimed under the same (or connected with the said R. C. Co.), in the said violation of your orator's rights, in order that said persons may be made parties to this proceeding, and that the said C. D. (and the R. C. Co., its officers), associates, agents, and employees may be enjoined and restrained both provisionally and perpetually from asserting any right under the said letters patent granted C. D. as aforesaid, or in or under the invention purporting to be secured thereby, your orator prays for a provisional or preliminary injunction herein, and that the said defendants be required to appear and answer hereto, and for such other and further relief as the equity of the case may require, and as to your honors may seem meet. May it please your honors to grant unto your orator a writ of injunction, conformable to

the prayer of this bill, and also a writ of subpoena of the United States of America, directed to the said C. D. (and the R. C. Co.), and commanding him [them], (and the officers of the R. C. Co.) to abide and perform such order and decree as to the court may seem meet, and be required by the principles of equity and good conscience. X. & X.,

Solicitors for Plaintiffs.

[*Verification.*]

(1) R. S. Sec. 4918.

No. 346.

Bill to Compel Issue of Patent (1).

[*Caption as in No. 67.*]

A. B., of the city of —, in the state of —, and a citizen of said state, brings this bill against C. D., of the city of —, in the state of —, and a citizen of said state, and an inhabitant of the district aforesaid.

And thereupon your orator complains and says that heretofore, and before the — day of —, 1894, but not more than two years before said date, the said A. B., being a citizen of the United States, was the true, original, and first inventor of certain new and useful improvements in — machines, not known or used before said invention, and not at the time of his application for patent therefor, as hereinafter set forth, in public use or on sale for more than two years, which invention comprised, among other things, generally [*here set forth the invention in general terms, and continue as follows*].

That the said invention was more fully and specifically embraced in the several claims of the application for a patent filed in the patent office of the United States by A. B., including those hereinafter recited.

That on or about the — day of —, 1894, the said A. B., being the inventor as aforesaid, and a citizen of the United States, made application to the commissioner of patents for letters patent of the United States for so much of the afore-

said invention as is embraced in, among others, the claims thereof, more particularly hereinafter mentioned, said application being made in accordance with the then existing acts of congress, and said applicant duly complying in all respects with all the requirements of the law in such case made and provided, and the said application included among others the following claims, as will more fully appear by a duly authenticated copy thereof, ready here in court to be produced, to wit: [*here set forth in full applicant's claims in controversy*].

That the said A. B., having, prior to the aforesaid application, exhibited said invention to C. D., of the city of —, in the state of —, and said C. D., seeking surreptitiously to appropriate the aforesaid invention, or so much thereof as is embraced in the claims hereinbefore recited, unjustly and unlawfully filed in the patent office of the United States an application therefor, wherein he falsely alleged himself to be the inventor thereof, which said application was filed on or about the — day of —, 1894.

That the said application contained claims covering the aforesaid invention of A. B. in the hereinbefore recited claims of his application, as will more fully appear from the patent issued thereupon hereinafter particularly mentioned, and a duly authenticated copy is ready here in court to be produced.

That thereupon the commissioner of patents withheld the allowance of the aforesaid claims, and declared an interference between the said A. B.'s application and the said C. D.'s application, including in said interference the subject-matter hereinbefore stated, and more particularly embraced in the several aforesaid claims of said A. B.'s application.

That the said A. B. duly prosecuted his aforesaid application and claims, furnishing proofs establishing the above-mentioned facts, and complying in all respects with the provisions of the law.

That upon the hearing of the said interference before the examiner of interferences, the issues were, as your orator

submits, erroneously found by the said examiner in favor of the said C. D.

That thereupon an appeal was taken by the said A. B. to the appeal board, otherwise known as the board of examiners-in-chief, the said board having heard the same, reversed the decision of the examiners of interference, and awarded priority to the said A. B.

That thereupon an appeal was taken to the commissioner of patents of the United States in person, who, as your orator submits, erroneously, and contrary to law and the evidence, reversed the decision of the appeal board and awarded priority to the said C. D., whereupon a patent embracing the aforesaid subject of interference was issued to the said defendant, C. D., under the date of —, 1894, No. —, and the claims in the said application of the said A. B., above set forth, were finally rejected by the patent office of the United States, as will more fully appear by duly authenticated copies of said application and of said letters patent No. —, and of said proceedings in the patent office of the United States, ready here in court to be produced.

That the commissioner of patents has refused and still refuses to grant letters patent upon the aforesaid A. B.'s application for the invention embraced in the above-recited claims, though your orator is lawfully entitled thereto, and is the sole owner of all right, title, and interest in and to his said invention, and in and under his said application.

And forasmuch as your orator can have no adequate relief except in this court, he brings this bill under and in accordance with the provisions of the statute in this case made and provided, and prays your honors to adjudge and decree that A. B. is entitled to receive letters patent of the United States for his aforesaid invention, as specified in the before-recited claims of his said application.

That your honors may adjudge the said A. B. to be the first true and original inventor of the said improvements in — machines, set forth in and forming the issues of inter-

ference hereinbefore mentioned in the claims rejected in the before-mentioned application of A. B., and decree that due letters patent therefor be issued to your orator, and for such other and further relief as equity may require, and as to your honors may seem meet.

May it please your honors to grant unto your orator a decree in conformity with the prayer of this bill, and a writ of subpoena of the United States, directed to the said C. D., and commanding him to appear and answer unto this bill of complaint, and abide and perform such order and decree in the premises as to the court shall seem meet, and be required by the principles of equity and good conscience.

[*Signature and Verification. See Nos. 84 and 85.*]

(1) R. S., 4915; Foster's Fed. Prac., Sec. 11, and cases cited.

No. 347.

Petition of Manufacturer to Intervene and Defend its Vendee.

[*Caption.*]

Your petitioner, the G. S. Co., respectfully shows unto your honors that it is a corporation organized under the laws of the state of —, and that it is engaged in the business of manufacturing, and manufactures, among other things, [harvesting machines].

And your petitioner further shows unto your honors that on the — day of —, A. B. filed his bill in equity in this court against C. D., charging him with the infringement of letters patent of the United States, No. —, granted A. B. on the — day of —, for an improvement in [harvesting machines], by selling and offering for sale certain [harvesting machines], alleged to contain the invention set forth in said patent, praying process and injunction restraining the further use or sale by the said C. D. of the [harvesting machines] alleged to be an infringement of the patent aforesaid.

And your petitioner further shows unto your honors that the said [harvesting machines], alleged to be an infringement

of the patent aforesaid, were manufactured by your petitioner at —, and were purchased from it by the said C. D., and your petitioner says that it has a large number of vendees throughout this country who are selling its [harvesting machines], similar in construction to those sold by said C. D., the defendant herein, and that A. B. threatens to bring suit against other vendees of your petitioner, thereby greatly injuring its business and unnecessarily harrassing its customers and multiplying suits.

And your petitioner further says that C. D. has not sufficient interest in the result of this suit to properly defend the same, and that your petitioner has great interest in the result of this controversy, in that if a decree be entered against the said C. D. herein, and an injunction granted, as prayed in the bill of complaint herein, your petitioner fears that the said A. B. will pursue its vendees and file suits against them, as he has threatened to do, and that preliminary injunctions will be granted in such suits on the ground of prior adjudication of the validity of the patent, all of which will tend to greatly injure the business of your petitioner to his irreparable loss.

And your petitioner further shows unto your honors that the said A. B. has never brought suit against your petitioner charging it with infringement of said patent, although your petitioner has been manufacturing, advertising, and selling [harvesting machines] like those alleged to be an infringement in the bill of complaint herein, and the said A. B. knew well that your petitioner was so doing long before he filed his bill herein.

Wherefore your petitioner prays that it may be made party defendant herein and be allowed to intervene, and be made defendant herein and to file an answer and to defend the same, and for all other and further relief.

The G. S. Co.,
By G. S., President.

R. X.,

Attorney for Petitioner.

[*Verification. See No. 85.*]

No. 348.**Order Granting Permission to Intervene and Defend.**

[*Caption.*]

This cause being heard this —— day of ——, upon petition of The G. S. Co. for leave to intervene and defend the same, said petition showing the said The G. S. Co. to be the manufacturer of the devices charged as infringement of the patent sued on herein, and counsel having been heard for the respective parties, it is ordered that the said petitioner have leave to intervene as defendant, and to defend the same.

DEMURRER AND PLEAS.

No. 349.

Demurrer (1).

The Demurrer of C. D., Defendant herein, to the Bill of Complaint of the above-named Plaintiffs.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, demurs to the said bill. And for causes of demurrer shows :

First. That it does not appear from said bill of complaint that the plaintiffs herein have such title or interest in or under the letters patent herein sued upon as to enable them to maintain suit against this defendant.

Second. That the bill of complaint does not show any interest of D. & Co. in the subject-matter of the litigation.

Third. That it does not appear, from the bill of complaint, that the said G. W. and D. & Co. have a joint interest in the subject-matter of this litigation.

Fourth. It does not appear from the bill that the plaintiff, D. & Co., is entitled to any relief whatever.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, this defendant demurs thereto. And it prays the judgment of this honorable court whether it shall be compelled to make any answer to the said bill; and it humbly prays to be hence dismissed with its reasonable costs in this behalf sustained(2).

R. X.,

Solicitor for Defendant.

(1) Consult No. 122 *et seq.*, and notes. See Robinson on Patents, Sec. 1110; Story's Eq. Pl., Secs. 436, 646; Beach's Mod. Eq. Prac., Secs. 224, 280, and 31st to 38th Rules in Equity.

The question of patentability can not be decided on demurrer except in clear cases. *Blessing vs. Steam Copper Works*, 34 Fed. Rep., 753; *Dick vs. Oil-Well Supply Co.*, 25 Fed. Rep., 125. A demurrer does not admit that the invention is patentable; see *Engraving Co. vs. Hoke*, 30 Fed. Rep., 444. Delay in applying for a reissue may be raised by demurrer; see *Wollensak vs. Reiher*, 105 U. S., 96. Demurrer to a bill for profits filed one day before the patent expires has been sustained. *Davis vs. Smith*, 19 Fed. Rep., 823. Question of title raised by demurrer can not be removed by amendment; *Steam Relief Valve Co. vs. City*, 19 Fed. Rep., 253; S. C., 28 O. G., 283.

A defendant may demur to the whole bill, or demur to a part and answer to the residue, but can not both answer and demur to the whole bill; see 32d Rule in Equity, and consult Nos. 135, 138, and 139 *supra*; see also *Adams vs. Howard*, 9 Fed. Rep., 347, and compare the 37th Rule in Equity, as interpreted in *Hayes vs. Dayton*, 8 Fed. Rep., 702; but if the demurrer and answer are filed simultaneously, the plaintiff waives the right to object if he goes to argument on the demurrer; see *Hayes vs. Dayton*, above.

This demurrer was sustained in *Blair vs. Lippincott Glass Co.*, 52 Fed. Rep., 226.

(2) There must be an affidavit and certificate of counsel; see 31st Rule in Equity. For form of Affidavit and Certificate, see Nos. 133 and 134.

No. 350.

Plea setting up Defense of License from Patentee.

[*Caption.*]

The Plea of C. D., Defendant, to the Bill of Complaint herein.

This defendant, by protestation, not confessing or acknowledging things by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, and for plea to the whole of said bill, says:

That prior to the alleged assignment of the said letters patent sued on to A. B., plaintiff herein, the said L. M., patentee, on or about the — day of — 1890, executed a license to said C. D., granting him the right to make plows under the said letters patent, for the full term of the life of the said patent, in one factory, located at Akron, Ohio, and to sell the

same throughout the United States, in consideration of one thousand dollars, which was paid said L. M. by this defendant. The license referred to is in words and terms as follows: [*Here set forth the license in writing. If not in writing, so state*], and that this defendant has heretofore manufactured plows like those described and claimed in the letters patent sued on under said license, at Akron, Ohio, and at no other place.

All of which statements this defendant avers to be true, and he pleads the said license to the said plaintiff's bill, and prays judgment of this honorable court whether he should be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs in this behalf most wrongfully sustained. C. D.

[*Verification and Certificate of Counsel. For forms, see Nos. 133 and 134.*]

As to pleas in Equity generally, see Story Eq. Pl., Secs. 647, 837; 31st to 38th Rules in Equity; Beach's Modern Equity Prac., Secs. 293, 330, and forms Nos. 154 *et seq.*, *supra*.

As to pleas in Equity in Patent cases, see Robinson on Patents, Secs. 1112 *et seq.*, and cases cited in notes.

No. 351.

A Plea setting up Defense of prior suit.

[*Caption and introduction, and first paragraph as in No. 350, and continue as follows:*]

That heretofore, to wit, on or about the — day of —, 1894, the said plaintiff, A. B., filed his bill of complaint in the circuit court of the United States for the — district of —, against E. F., showing therein that the said A. B. was the patentee, and still holds the title of the said letters patent No. —, in which bill the said E. F. was charged with infringement of the said letters patent by the sale of [carriage-tops], the same as those charged to be the infringement of the same patent in the bill of complaint herein, and the same relief was prayed as is prayed in the bill of complaint herein.

That the said E. F. was, at the time the said infringement was complained of, a vendee of this defendant, and was selling [carriage-tops] manufactured by this defendant.

That the said E. F. appeared by counsel and made answer to said bill of complaint, and proofs were taken in behalf of plaintiff and defendant, and on or about the — day of —, the said case came on to be heard before his honor, Judge W., and was argued by counsel for plaintiff, as well as for defendant, and, after due consideration, his honor, Judge W., pronounced his opinion, holding that the said [carriage-tops] were not an infringement of the said letters patent, and entered a decree accordingly, dismissing the said bill of complaint at plaintiff's cost.

That the [carriage-tops] referred to in the bill of complaint herein, and all the [carriage-tops] and devices for the manufacture, use, and sale of which this defendant is charged with infringement in the bill of complaint herein, are the same in all respects as are those for the sale of which the said E. F. was charged with infringement in the aforesaid bill of complaint, dismissed as aforesaid, and which is the object of controversy in said suit.

Wherefore this defendant pleads this prior adjudication upon the matters and things here in controversy, all which statement this defendant avers to be true, etc. [*conclude as in No. 350*].

No. 352.

A Plea Setting up the Defense of a License and Settlement of prior suit (1).

[*Caption, introduction, and first paragraph as in No. 350, and continue as follows:*]

That heretofore, to wit: on or about the — day of —, 1888, the said plaintiff, A. B., filed his bill of complaint in this court against C. D., showing therein that the said A. B. had acquired title of the said letters patent No. —, in manner and

form set forth in the bill herein, whereby he was vested with the exclusive rights under said letters patent, in which bill the said C. D. was charged with infringing the aforesaid letters patent by the manufacture, use, and sale of [pumps], the same as those charged to be the infringement in the bill of complaint herein, and the same relief prayed as is prayed in the bill of complaint herein.

That the said defendant appeared by counsel, and thereupon, while said cause was pending, overtures for settlement were made to the said defendant by the said A. B.

That the said defendant thereupon, and while said suit was pending, on or about the — day of —, 1889, for the purpose of protecting his patrons and vendees from the annoyance to which they were subject by reason of the pendency of said suit, and by reason of threats of suits under the same patents being made by said plaintiff against the said patrons and vendees of the defendant, and for the purpose of avoiding for himself the expense of further litigation, entered into a contract with the said plaintiff, whereby, in consideration of the agreement on the part of the defendant therein, to dismiss a certain suit for infringement of letters patent for improvements in [pumps], then pending in this court, in which said defendant was party plaintiff, and J. M., dealer in [pumps] manufactured by the said A. B. under the patents herein sued on, was defendant, and the said [pumps] so manufactured were complained of as infringements of the patents so sued upon, and the said plaintiff A. B. agreed forthwith to dismiss his aforesaid bill against C. D., and to release and license the said C. D. to manufacture and sell [pumps] under each and all of the patents owned by him throughout the term thereof.

That, in pursuance of said contract, at or about the date aforesaid, an agreement in writing was entered into by the said parties, duly signed and executed by the said C. D. and the said A. B., and thereupon a duplicate thereof made in ink by the said A. B., signed and executed as aforesaid, and by

him delivered to the said C. D. Which said agreement in writing is in words and terms as follows, to wit: [*here set forth the agreement*], the said suit against C. D., and the said suit against J. M., being the only suits pending between the said parties directly or indirectly.

That the said licenses referred to therein are licenses to manufacture, use, and sell under all the patents recited in the respective bills of complaint therein. and all other patents relating to pumps owned or controlled by the said parties respectively or either of them.

That the said agreement was at the time, to wit: on or about the — day of —, 1889, fully understood and intended by the plaintiff herein, and each and all parties thereto, to be a final agreement, executed, and as such in force and effect from the date thereof.

That he having often requested the said A. B. to withdraw his said bill of complaint in accordance with the said contract and agreement, offering simultaneously to dismiss his said bill against the said J. M., and the said A. B. having refused so to do, he, the said C. D., moved this honorable court for an order dismissing the said bill of complaint in pursuance of said contract and agreement, and his said motion having been heard by his honor, Judge W., upon argument as well in behalf of said plaintiff as said defendant, the aforesaid bill was thereupon ordered dismissed, and was dismissed, and the said bill against the said J. M. was thereupon by plaintiff duly dismissed.

That the [pumps] referred to in the bill of complaint herein, and all the pumps and devices by the manufacture, use, and sale of which this defendant is charged with infringement in the bill of complaint herein, are the same in all respects as those by the manufacture, use, and sale of which the said C. D. was charged with infringement in the aforesaid bill of complaint, dismissed as aforesaid, and which were the object of controversy in said suit, and released and licensed by the aforesaid contract and agreement, and have

been and are being manufactured and sold by the said C. D. under and in accordance with the terms and provisions of said contract and agreement.

Wherefore this defendant avers, by virtue of the premises, the said [pumps] and all [pumps] and devices complained of in said bill of complaint herein, manufactured by the said C. D., are released as well in respect to their manufacture as in respect to their sale and use by the agents and vendees of the said C. D. from all adverse claim of right under the aforesaid letters herein sued upon, and in all letters patent owned in whole or in part by the said A. B. and the full extent of his interest therein.

That all of which this defendant avers to be true, and he pleads the said release, and prays the judgment of this honorable court whether he should be compelled to make any further or other answer to so much of the said bill as is herein pleaded unto, and prays to be hence dismissed with his costs and charges in that behalf most wrongfully sustained.

C. D.

[*Verification and Certificate of Counsel. See Nos. 133 and 134.*]

(1) See notes to No. 350.

No. 353.

Plea to Jurisdiction.

For form of Plea, see No. 163.

ANSWERS.**No. 354.****General Form (1).**

[*Caption.*]

The Answer of C. D. to the Bill of Complaint herein.

This defendant now, and at all times, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the errors or uncertainties or other imperfections in said bill of complaint contained, for answer thereto or unto so much of such parts thereof as said defendant is advised is or are material for him to answer unto, says as follows :

First. He denies, upon information and belief, that the said A. B. was the true, original, or first inventor of any new or useful invention in — machines, as alleged in said bill ; says that it is not true that said alleged invention was not known or used in this country, and not patented or described in any printed publication in this or foreign countries before his alleged invention thereof, or that the same had not, at the time of his application for a patent therefor, been in public use or on sale for more than two years.

Second. He is not informed, except by said bill of complaint, whether letters patent for said alleged invention in due form of law were issued to said A. B., or whether said alleged letters patent were under the seal of the patent office of the United States, or were signed by secretary of the interior, or countersigned by the commissioner of patents, and leaves the plaintiff to make such proof thereof as he may ; and denies that the said letters patent granted to the said A. B., his heirs or assigns, for the term of seventeen years, or for any other term, the exclusive, or any other right,

to make, use, or vend the said alleged invention throughout the United States and territories thereof, or any right whatsoever.

Third. He denies that, at the time alleged in said bill of complaint, or at any time, he did make, use, or vend — machines containing and embodying the invention set forth and covered by said letters patent sued upon, or that he has, in any way, infringed upon the exclusive rights, or any rights, of the complainant, or intended so to do; denies that he has derived or realized any profits which plaintiff would have derived from his alleged exclusive rights, and denies that plaintiff is deprived of any royalties, or has incurred any damages by any unlawful or wrongful acts of said defendant.

Fourth. He says that upon information and belief that the said A. B. was not the original and first inventor or discoverer of the invention purporting to be covered by the said letters patent, or of any material or substantial parts thereof, and that the same, or material, or substantial part thereof, had been in public use and on sale in this country prior to said alleged invention, and for more than two years before the application for said letters patent; and further, that the same had been described and illustrated in printed publications and patents prior to the date of the supposed invention of the said A. B.

Said defendant specifies instances of such prior use and publication as follows, to wit:

Letters patent of the United States as follows:

No. —, granted S. W. C., June 25, 1878.

No. —, granted J. N. R., October 29, 1879, etc.

Letters patent of the Kingdom of Great Britain as follows:

No. —, of 1875, granted H. S. W., and dated June 12, 1875, etc.

Machines manufactured and sold by the N. G. Company, at Cincinnati, Ohio, known at Cincinnati, Ohio, to W. S., whose residence is Akron, Ohio, and to G. B. M., whose residence is Chicago, Illinois, and to others, whose names and

places of residence the defendant craves leave to furnish hereafter.

A printed publication, made up of drawings and figures illustrating various machines entitled "Modern Machines," issued and circulated by the College Hill Manufacturing Company, Edinburg, Scotland, which the defendant craves leave to produce and exhibit to the court at any hearing of this case, together with proof that the particular publication produced was printed and circulated at least as long as four years before the alleged invention of A. B. Reference to the illustrations, nine in number entitled [*here give titles of illustrations*], on page 10, also to three illustrations on page 21, also to figures number 9, 11 (etc.), on page 25 of said publication.

Fifth. He says, upon information and belief, that the letters patent sued upon are invalid for want of patentable invention.

Sixth. He says, upon information and belief, that the plaintiff has full and adequate relief at law, and that this court, as a court of equity, has no jurisdiction.

Wherefore this defendant, having fully answered to the said bill of complaint in so far as he is advised the same is material and necessary to be answered unto, denies that the said plaintiff is entitled to the relief or any part thereof in the said bill of complaint demanded, or any relief whatsoever; prays the same advantage of his aforesaid answer as if he had pleaded and demurred to said bill of complaint, and prays to be hence dismissed with his reasonable charges in this behalf most wrongfully sustained. C. D.

X. & X.,

Solicitors for Defendant.

R. X.,

of Counsel.

(1) See Robinson on Patents, Sec. 1114, *et seq.*; R. S., Sec. 4920; consult also Robinson on Patents, Sec. 959 *et seq.* As to forms for formal parts of an Answer, see No. 176 *et seq.*

SPECIAL ALLEGATIONS IN ANSWERS.

The following allegations may be inserted in the foregoing answer when it is desired to set up any of the following defenses. A few apparent changes may be required in No. 354 when these insertions are made. Special defenses, which in actions at law must be set forth in a notice, in equity appear only in the answer. See Robinson on Patents, Sec. 1116; also Secs. 959 to 984; R. S., Sec. 4920.

No. 355.**Denying Assignees Right to Sue.**

[Here the patentee and plaintiff are not the same, and S. T., the actual patentee, should be inserted, and insert the following as third:]

He is not sufficiently informed whether the said S. T., by an instrument in writing, assigned to the plaintiff all his right, title, and interest in, or any exclusive rights in, said invention or said patent; or whether said written assignment includes the right to sue for and collect damages for the unauthorized use of said alleged invention, or whether said instrument was duly recorded in the patent office of the United States, and leaves the plaintiff to make such proof thereof as he may.

No. 356.**Alleging Imperfect Specification (1).**

He is informed, and believes it to be true, that for the purpose of deceiving the public, the description and specification of the said invention and discovery filed by A. B., the pat-

entee thereof, in the patent office of the United States, was made to contain less than the whole truth relative to his said invention and discovery [*or, more than is necessary to produce the desired effect*] in this, that [*set forth the particulars*].

(1) R. S., Sec. 4920, first clause.

No. 357.

Alleging Defective Specification.

He is informed, and believes it to be true, that the description of the alleged invention, as set forth in the specification annexed to said letters patent sued on, is incomplete and ambiguous, and the said specification does not show the method of making and using the said alleged patented invention in such full, clear, and exact terms as to enable any person skilled in the art or science to which it appertains to make and use the same.

No. 358.

Denying Utility.

He denies that the said invention so patented to the said A. B. is of great, or any, utility and value, or that the same has been introduced into public use, or that the public generally, or any portion thereof, have acquiesced in and acknowledged the plaintiff's exclusive right to the same, or any portion thereof.

No. 359.

Denying Prior Adjudication.

He is not informed, save by said bill of complaint (and affidavits filed in this suit), whether or not the said A. B. instituted and prosecuted in the circuit court of the United States for the — district of — against L. W., or that judgment of the court was pronounced, or that a decree was

entered therein affirming the validity of said letters patent sued on, or a perpetual injunction granted and issued against the said L. W., and he therefore denies the same; but this defendant says that he is informed and believes that a certain suit was brought by the said A. B. against one L. W. in the — district of —, and that an answer was filed in the said suit, and that the said case was determined without a trial on the merits of the said controversy, and denies that the decree in the said case in any way affected or concerned any device or machine similar to devices and machines made, used, or sold by the defendant herein.

No. 360.

Alleging Limitation of Claims of Patent by Proceedings in the Patent Office.

He is informed and believes that, while the application for the said letters patent in said bill mentioned was pending in the patent office of the United States, the applicant for the patent, the said A. B., so limited and confined the claims of the said application under the requirements of the commissioner of patents that he can not now seek for or obtain a construction for such claims sufficiently broad to cover the construction used by this defendant.

No. 361.

Denying Grant of Licenses and Public Acquiescence.

He denies, upon information and belief, that the alleged rights of plaintiff under said letters patent sued on have been acquiesced in, and denies that the plaintiff has granted licenses under said letters patent or has applied the said alleged invention to practical use extensively or otherwise, or has expended large sums of money in and about said invention.

No. 362.**Denying Plaintiff's Title.**

He denies, upon information and belief, that plaintiff has such title in said letters patent as to enable him to maintain this suit.

No. 363.**Alleging Abandonment.**

He says, upon information and belief, that the alleged invention had been abandoned to the public prior to A. B.'s application for a patent therefor.

No. 364.**Alleging Invention by Another Person (1).**

He says, upon information and belief, that prior to the alleged invention of A. B., and prior to his filing an application for a patent in the patent office of the United States, that one S. H. exhibited the said invention to A. B., of —, and said A. B., seeking surreptitiously to appropriate the aforesaid invention, or so much thereof as is embraced in the claims of the patent sued on, unjustly and unlawfully filed in the patent office of the United States an application therefor, wherein he falsely alleged himself to be the inventor thereof, and thereafter he surreptitiously and unjustly obtained the patent sued on for that which was in fact invented by S. H., who was using reasonable diligence in adapting and perfecting his said invention.

(1) R. S., Sec. 4920, second clause.

No. 365.**Alleging Limitation of Duration of Patent by a Prior Foreign Patent (1).**

He says, upon information and belief, that before the date of the patent sued on, viz., the — day of —, 1889, letters

patent of the Kingdom of Italy were granted to the said A. B. for the term of three years from the — day of —, 1887, for the same alleged invention as that set forth in the patent sued on, which said Italian patent expired on the — day of —, 1890, and that the life of the said letters patent sued on terminated with the expiration of said Italian patent.

(1) R. S. Sec. 4887.

EXCEPTIONS, DEPOSITIONS, ETC.**No. 366.****Exceptions to Answer.**

Consult forms No. 211 *et seq.*

No. 367.**Replication.**

See form No. 218.

No. 368.**Appearance.**

See forms Nos. 11, 12, and 13.

No. 369.**Amendment.**

Consult forms No. 234 *et seq.*

No. 370.**Order Granting Leave to Amend Answer and Set up
Additional Defenses.**

[*Caption.*]

Upon motion of the defendant, it is ordered that he have leave to amend his answer herein and to set up further prior uses therein to have the same force and effect as if they were set up in the original answer heretofore filed.

No. 371.**Security for Costs.**

For form of Motion for Additional Security for Costs, see No. 220.

No. 372.**Limiting Time within which to take Evidence.**

For forms of Motion to Assign Time and Order on the same, see Nos. 244 and 245.

No. 373.**Depositions.**

For forms for Stipulation Appointing Notary Public an Examiner, Notice for Taking Depositions, Commencement for Depositions, Certificate, see Nos. 22-25, and 256 *et seq.*, and for form for Transmission, see No. 26.

No. 374.**Depositions De Bene Esse.**

Consult Nos. 22 to 26.

No. 375.**Cost Bill.**

For form, see No. 28.

No. 376.**Stipulation to Submit Cause on Brief.**

For form see No. 267.

No. 377.**Entry Discontinuing Case.**

[*Caption.*]

To the Clerk of the Court:

We hereby discontinue the above-entitled cause, without prejudice, at plaintiff's cost.

X. & X.,
Attorneys for Plaintiff.

PRELIMINARY INJUNCTION PROCEEDINGS.**No. 378.****Notice of Motion for Preliminary Injunction (1).**

[Caption.]

To R. Y.,

Counsel for Defendant:

Please take notice that on the — day of —, 1893, at ten o'clock a. m., or as soon thereafter as counsel can be heard, I will move for a preliminary injunction, as prayed in the bill of complaint herein, based on the decisions of the courts in former suits under letters patent No. —, on which this suit is brought, and the affidavits of E. F., G. H., and J. K., and the exhibits referred to in said affidavits, a true copy of which is herewith served upon you.

R. X.,

Counsel for Plaintiff.

Service accepted this — day of —, 1894.

Y. & Y.,

Counsel for Defendant.

(1) Notice must be served on opposing party or his counsel. See 55th Rule in Equity.

No. 379.**Affidavit of Service.**

[If counsel fail to accept the service, the following affidavit of service may be attached to a copy of the notice served.]

State of —,

County of —, ss.

J. R. makes oath, and says that he served notice, of which the above is a true copy, together with a copy of the bill of

complaint and the accompanying affidavits, hereto annexed, on C. D., one of the defendants herein named [*or*, on counsel for the defendant, *as the case may be*], in the city of —, on the — day of —, 1894. J. R.

Subscribed and sworn to before me this — day of —, 1894. J. N.,

[*Seal.*] —

[*Official Title.*]

No. 380.

Order Overruling Motion.

[*Caption.*]

This cause coming on to be heard upon motion of plaintiff for a preliminary injunction, and affidavits in behalf of the plaintiff, as well as in behalf of the defendant, and counsel for the respective parties having been heard, and the same having been duly considered by the court, it is hereby ordered, adjudged, and decreed that the said motion be, and the same is hereby overruled at the plaintiff's cost.

No. 381.

Order to Show Cause why Injunction should not Issue, etc.

[*Caption.*]

Upon reading the bill of complaint herein and the affidavits of G. R. and S. P., and on motion of R. X., solicitor for the plaintiff, it is hereby ordered this — day of —, 1894, that the defendant show cause, if any he has, before the judge of said court at —, in the city of —, district of —, on the — day of —, 1894, at ten o'clock a. m., or as soon as counsel can be heard, why the injunction should not issue pursuant to the prayer of said bill.

No. 382.

Order for Preliminary Injunction (1).

[*Caption.*]

This cause having come on to be heard on motion of plaintiff for a preliminary injunction, and on reading and

filing notices of motion for an injunction herein and proof of service thereof, and the affidavits on behalf of the plaintiff annexed thereto, and on reading and filing affidavits on behalf of the defendant, and counsel for defendant as well as for the plaintiff have been heard, and the same having been duly considered by the court, and it appearing that letters patent of the United States No. —, were issued in due form of law on the — day of —, for an improvement in [hobby-horses], to A. B., and that the said defendant, C. D., has infringed on the rights secured by the aforesaid letters patent by making and selling to others [hobby-horses] embodying the invention set forth in said patent contrary to form of the statute in such case made and provided.

Now, therefore, it is hereby ordered, adjudged, and decreed that a preliminary injunction be issued pursuant to the prayer herein, strictly commanding and enjoining the defendant, C. D., his clerks, agents, servants, workmen, and attorneys, under the pains and penalties which may fall upon them, and each of them, in case of disobedience, that they forthwith, and until the further order, judgment, and decree of this court, desist from making, using, and selling any [hobby-horses] as described and claimed in the said letters patent.

(1) As to injunction generally, see Foster's Fed. Prac., Sec. 205 *et seq.*, Beach's Modern Eq. Prac., 753 *et seq.* When preliminary injunctions are grantable in patent cases, see Robinson on patents, Sec. 1169 *et seq.*, and cases cited in notes.

No. 383.

Preliminary Injunction.

[Caption.]

The President of the United States to C. D., and his clerks, agents, attorneys, servants, and workmen, greeting.

Whereas, it has been represented to us in the circuit court of the United States for the — district of —, that letters patent No. — were issued in due form of law on the —

day of —, for an improvement in [hobby-horses] to A. B., and that you, the said C. D., have infringed the rights secured by the aforesaid letters patent by making and selling to others [hobby-horses] embodying the invention set forth and claimed in the said letters patent, contrary to the form of the statute in such cases made and provided:

Now, therefore, you, the said C. D., your clerks, agents, attorneys, servants, and workmen are strictly commanded and enjoined under the pains and penalties which may fall upon you, and each of you, in case of disobedience, that you forthwith, and until the further order, judgment, and decree of this court, desist from making and selling any [hobby-horses] embodying the invention of said letters patent, substantially as described and claimed in the said letters patent.

[*Add teste. See No. 31.*]

No. 384.

Order Refusing Injunction upon Defendant giving Bond.

[*Caption.*]

And now, this — day of —, 1893, the above cause having come on to be heard on the — day of —, on motion of plaintiff for a preliminary injunction in accordance with the prayer of the bill in the above-entitled cause, and upon affidavits and exhibits filed by the plaintiff and the defendant, and having been argued by counsel for the respective parties, and the court having fully considered the same, the motion is overruled at the cost of the plaintiff, but it is ordered that the defendant give bond in the sum of — dollars to the plaintiff for the payment of any profits or damages that may be decreed against it in this cause for the infringement of the patent sued on (between the date of this order and the final decree); and it is further ordered that if the defendant fails to execute and file with the clerk of this court such bond within twenty days from the date of this entry, plaintiff may renew said motion.

It is further ordered that the defendant keep an account of all sales of [chimneys] manufactured and sold, or sold by him like the exhibits marked —, to be produced when called for by the court.

No. 385.

Bond in Lieu of Preliminary Injunction.

[*Caption.*]

The United States of America,
for the — District of —, ss.

Know all men by these presents, that C. D., as principal, and E. F., as surety, are held and firmly bound unto A. B. in the sum of — dollars, to the payment of which they bind themselves and each of them, their heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this — day of —, 1894.

The condition of the above bond is such, that whereas in accordance with an order of the circuit court of the United States within and for the — district of —, in the case wherein A. B. is plaintiff and C. D. is defendant, the said C. D. executed a bond in the sum of — dollars, to pay the plaintiff A. B. such sum as may, upon final hearing, be decreed in his favor by reason of infringement of the patent sued on committed between the date of the order of said court and the final decree herein, in the said cause.

Now, if the said C. D. shall abide the decisions of the said court, and pay all moneys and costs which shall be attached against him in this cause, then these presents shall be void; otherwise to remain in full force.

C. D. [*Seal.*]

E. F. [*Seal.*]

[*For acknowledgment and justification of sureties see No. 36.*]

No. 386.**Motion to Dissolve Preliminary Injunction (1).**

[*Caption.*]

And now comes the defendant, by its counsel, and moves the court to dissolve the injunction heretofore issued in this cause, on the ground that the patent sued on is invalid and void in view of the exhibits filed herein on behalf of defendant, or to modify the injunction so as not to prohibit the manufacturing and selling of [hobby-horses] by C. D. under and in accordance with letters patent No. —, granted to A. B., —, 1893, for the reason that said [hobby-horses] do not infringe said patent sued on.

R. Y.,

Solicitor for Defendant.

(1) See Robinson on Patents, Sec. 1213.

No. 387.**Order Overruling Motion to Dissolve.**

[*Caption.*]

This case coming on to be heard this — day of —, on motion of the defendant to dissolve the preliminary injunction, and counsel having been heard for the defendant as well as for the plaintiff, and due consideration having been had thereof, it is ordered that the said motion be and the same is hereby overruled at the defendant's cost.

No. 388.**An Order Granting Motion to Dissolve Injunction and Substituting Bond for Injunction.**

[*Caption.*]

This cause came on to be heard on the — day of —, on the motion of defendant filed —, 1894, to dissolve the preliminary injunction heretofore granted in this cause, and counsel having been heard, and the same having been duly

considered by the court, it is ordered, adjudged, and decreed that the said injunction be set aside, provided the said defendant within five days give a good and sufficient bond in the sum of —— dollars, to pay all damages and profits with reference to any account which may be found or assessed against the said defendant by reason of the manufacture and sale of [hobby-horses], and all manufactures and sales in infringement of plaintiff's letters patent sued on in his said bill, and the bond shall relate back to the —— day of ——, when the order for injunction was first made.

CONTEMPT PROCEEDINGS.

No. 389.

Motion for Rule to Show Cause, etc., for Contempt.

[*Caption.*]

Now comes the plaintiff and moves the court for a rule upon the defendant to show cause why he should not be attached for contempt for violation of the injunction heretofore granted in this cause, and for reason says that on or about the — day of —, 1894, a decree was rendered herein, finding the letters patent sued on good and valid, the property of plaintiff, and infringed by defendant by the manufacture, use, and sale of [cradles] known and designated as [hobby-horses], and awarding an injunction against said defendant, his clerks, agents, servants, and workmen, which decree is still in full force and effect; that on or about the — day of —, a writ of injunction was issued in accordance with the said decree, enjoining said defendant, his clerks, agents, servants, and workmen from the manufacture, use, and sale of the said infringing devices, which writ of injunction was duly served upon the defendant on or before the — day of —, 1894, and is still in full force and effect; but since the service of said injunction, defendant and his agents, particularly L. K., in violation of the rights of plaintiff and of the injunction aforesaid, have continued extensively to manufacture, use, and sell [cradles] known and designated as [hobby-horses], embodying the invention, the manufacture, use, and sale of which was enjoined as aforesaid, being identical in construction with the hobby-horse, adjudged to be an infringement of the patent sued on, to the great and irreparable damage and injury of the plaintiff.

A. B.

R. X.,

Counsel for Plaintiff.

No. 390.**Order Granting Motion for Contempt.**

[*Caption.*]

Upon motion of plaintiff it is ordered that a rule be issued on the defendant, C. D., and on L. K., to appear before this court at 10 o'clock a. m., on Saturday, the — day of —, 1894, to show cause why they should not be committed for contempt for violation of the injunction heretofore ordered and issued in this cause.

No. 391.**Rule to Show Cause.**

[*Caption.*]

The President of the United States of America to C. D.:

You are hereby cited and admonished to appear before the circuit court of the United States within and for the — district of —, on —, the — day of —, 1894, at — o'clock a. m., and show cause, if any you have, why the said C. D. should not be attached for contempt of court in failing to obey the order of injunction heretofore allowed and issued by the said court, and served upon you.

It is ordered that the marshal of this district make legal service, and due return of this rule, on or before the appearance day above noted.

[*Add teste. See form No. 31.*]

No. 392.**Return on above Rule by Marshal.**

[*Caption.*]

Received this writ at —, on the — day of —, 1894, and on the same day, at —, I served the within-named C. D. [*or, the B. K. Manufacturing Company, a corporation, by C. D., its president*], with a true copy of this writ, having all

the indorsement thereon, by handing it to said person personally [*or say*, left at his regular place of business, at No. —, — street, —].

H. C.,

United States Marshal for the
— District of —

Fees.

One service, —

One copy . —

— miles, —

No. 393.

**Order Adjudging Defendant Guilty of Contempt, and
Fining him.**

[*Caption*].

Upon the return of the rule to show cause heretofore entered, and it appearing that service thereof has been had on said defendant, C. D., and upon L. K., by delivering a copy thereof to the said C. D., and counsel having been heard in his behalf, the court finds the said defendant is in contempt of the injunction heretofore issued herein, and orders that said defendant pay — dollars fine and the costs of this proceeding, and that if the same be not paid within five days from this date, viz., the — day of —, 1894, the said C. D. be committed to the jail of — county, in the state of —, and confined therein until the same be paid.

No. 394.

**Order Adjudging Party Guilty of Contempt. (Another
Form.)**

[*Caption*].

A motion for attachment for contempt herein having come on for further hearing on the question of punishment or terms, on this — day of —, and R. X., Esq., having been heard for the motion, and R. Y., Esq., opposed: Now, therefore, it is hereby ordered and decreed that the defend-

ant is adjudged to have committed the contempt alleged, and that he pay, as a fine therefor, the amount of all costs, charges, and disbursements whatsoever suffered, borne, or incurred by the plaintiff by reason of, or on account of, the said motion, and that the question of the amount of said fine be submitted to this court on affidavits, and without argument, as follows: The plaintiff to serve his affidavits on the solicitor for the defendant on or before Friday, —; that defendant serve his replying affidavits on counsel for plaintiff on or before Tuesday, —, and that plaintiff have the right to reply; and that all affidavits be filed on or before Friday, —.

No. 395.

Order Fining Defendant for Contempt.

[*Caption.*]

This motion having been heard on the — day of —, —, on affidavits and argument by counsel for the respective parties, and thereupon an order having been duly made that it be referred to S. M. to ascertain the fact of said infringement, if the same be so, and report his finding to this court, and upon the coming in of the report of said referee, and hearing counsel for the respective parties in support thereof and in opposition thereto, said report was confirmed; and it was then further ordered that the plaintiff file with the court, and serve copies on defendant, affidavits showing the expenses incurred in the prosecution of this second attachment for contempt; that defendant file and serve answering affidavits, and that plaintiff may reply thereto; and an amended order and the affidavit of C. D., the defendant, executed on the — day of —, having been filed in reply to said plaintiff's affidavit, it is, upon consideration thereof, ordered that the defendant pay into court the sum of — dollars, as set forth in the affidavit of B. H., executed herein on the — day of —, and the further sum of —

dollars, as set forth in the affidavit of V. F., executed herein on the — day of —, amounting altogether to the sum of — dollars, a fine for said second contempt, within thirty days from the date of the entry of this order, to wit, the — day of —; and that if not paid, the defendant stand committed till it be paid, and that when paid it be paid over to the plaintiff in reimbursement.

No. 396.

Entry of Distribution.

[*Caption.*]

Upon motion of J. E. B., assistant United States attorney, and it appearing to the court that the defendant C. D. has paid into the registry the fine for contempt in this case, amounting to — dollars, and the court proceeding to distribute the same, orders and directs the said sum to be paid to the assistant treasurer of the United States at —, for the use of the United States.

DECREES, ETC.**No. 397.****Order for Decree Pro Confesso (1).**

[*Caption.*]

The bill of complaint having been filed in the above-entitled case, and the subpœna issued herein having been returned on the — day of —, 1894, and it appearing therefrom that the said subpœna was duly served upon the above-named defendant on the — day of —, 1894, and it appearing that the said defendant has failed to appear or plead, answer or demur to the bill of complaint herein, and is in default therefor; now comes the plaintiff by his counsel and enters an order that the bill of complaint herein be taken *pro confesso*.

R. X.,

Solicitor and of Counsel for Plaintiff.

(1) This order is filed, as a matter of course, with the clerk. 18th Rule in Equity.

No. 398.**A Decree Pro Confesso.**

[*Caption.*]

This cause having been brought on for hearing, and it appearing that the defendant was duly served with process on the — day of —, 1894; that the defendant having failed to appear or to plead, answer, or demur, and an order for a decree *pro confesso* was duly entered on the — day of —, 1894; that more than thirty days have passed since the entry of said order; the court thereupon adjudges and decrees that the plaintiff is the sole and exclusive owner of the letters patent, No. —, set forth in the bill of complaint, granted to A. B. for improvement in —, and dated the — day of

—, 1888; that the plaintiff is also the owner of the entire right to recover damages and profits from all infringers of said letters patent; that said letters patent are good and valid, and have been infringed by the defendant herein, by the manufacture, use, and sale of — embodying said invention, and among others known and designated as —.

It is further ordered, adjudged, and decreed that the defendant, the said C. D., his agents, servants, and workmen, be and hereby are enjoined for the remainder of the term of the life of said letters patent from further infringing the same, and from manufacturing, using, or selling the said infringing —, or any — or — containing or embodying the invention or inventions embraced in said letters patent; that the plaintiff recover from said defendant as well the damages sustained in or by reason of said infringement as the profits, gain, and saving made or realized by the defendant thereby, together with the costs herein to be taxed, and that this cause be referred to B. R., Esq., as special master, to take, state, and report an account of damages and profits under and in accordance with this decree.

No. 399.

Motion to Set Aside Decree Pro Confesso.

[*Caption.*]

And comes the defendant and moves this court to set aside the decree entered herein on the — day of —, 1894, and for leave to appear and answer the bill of complaint.

C. D.,

by X. & X., his Attorneys.

No. 400.

Decree Dismissing Bill.

[*Caption.*]

See Nos. 268 to 270.

No. 401.**Interlocutory Decree Sustaining Patent.**

[*Caption.*]

This cause came on to be heard on the — day of —, 1894, upon the pleadings and proofs, and was argued by counsel as well for the plaintiff as for the defendant, and the pleadings and proofs having been duly considered, it is hereby ordered, adjudged, and decreed as follows:

That the plaintiff is the sole and exclusive owner of the letters patent set forth in said bill of complaint [*continue as in No. 398*].

No. 402.**Perpetual Injunction.**

[*Caption.*]

The President of the United States of America to C. D., his servants, agents, and workmen, Greeting:

Whereas it has been represented to us in our circuit court of the United States for the — circuit for the — district of —, that letters patent of the United States were issued to A. B. for improvement in —, dated the — day of —, 1888, No. —, of which the plaintiff is the sole and exclusive owner, and that the plaintiff is also the owner of all rights to recover damages and profits from all infringers of said letters patent (as well prior as subsequent to the assignment of said letters patent to plaintiff); that said letters patent are good and valid, and have been infringed by the defendant herein by the manufacture, use, and sale of — embodying said invention, and, among others, by — known and designated as —.

Now, therefore, we do strictly command and enjoin, you, the said C. D., your servants, agents, and workmen, for the remainder of the term of the life of said letters patent from further infringing the same, and from manufacturing, using, and selling the said infringing —, or any — containing or embodying the invention embraced in said letters patent.

[*Add teste. See No. 31.*]

No. 403.

Master.

After an interlocutory decree sustaining a patent, and declaring the defendant's device an infringement of the patent sued on, the court usually appoints a special master, to whom the case is referred, to ascertain and report damages and profits on account of such infringement. If a clerk of a United States Court is appointed, a special reason for such appointment must be assigned. See Vol. I, Supplement to R. S., Chap. 183, Sec. 2.

For forms of Notices, Oaths of Master, etc., see Nos. 275 to 281.

No. 404.

Master's Report.

[*Caption.*]

To the Honorable Judges of the Circuit Court of the United States for the ——— District of ———:

The undersigned, R. C., appointed special master in the above-entitled cause, under a decree entered therein the ——— day of ———, 1894, respectfully submits the following report:

Said decree directs the master to "ascertain, state, and report an account of the profits, gains, and advantages which have accrued to defendant, and the damages sustained by plaintiff, by reason of infringement of the patent sued on; also the number of said stop-valves made and also the number sold by said defendant since the ——— day of ———, 1885."

The master finds:

First. That the defendant manufactured during the time embraced in this inquiry 2,000 of said valves of different sizes, as follows: [*here make an itemized statement of the number of valves made in each style*], of these 1,975 have been sold, and 25 are on hand.

Second. That the plaintiff has granted licenses to L. M., dated ———; to S. H., dated ———; to H. B., dated ———, for a

uniform royalty of 20 cents per valve, and that the plaintiff produced testimony to show settlements with other infringers, namely, [*here state the names of such infringers in full*], on a basis of a royalty of 20 cents per valve, and the master finds that the said 20 cents per valve is an established royalty, and,

Third. That upon this basis the amount of damages due from the defendant to the plaintiff is found to be 20 cents per valve for 2,000 valves, amounting to four hundred dollars.

The testimony taken by the master, and the licenses and other exhibits, are filed herewith.

All of which is respectfully submitted.

R. C.,
Special Master.

Dated this — day of —, 1894.

No. 405.

Master's Report. (Another Form.)

[*Caption.*]

[*Proceed as in No. 404 to "Second," and continue as follows:*]

Second. There is no established royalty or license fee for the manufacture of said valves that appears in the testimony before your honors or in the testimony produced before this master.

Third. That of these valves, 500 cost 50 cents each, and 500 one dollar each, which is an average cost of 75 cents each. The cost of the remainder of the valves does not appear, and 75 cents is therefore assumed as the cost of all the valves made by the defendant, making the total cost of all the valves sold, \$1,481.25.

The total amount received for the valves by the defendant, as appears by defendant's books, was \$1,962.50; leaving a net profit on valves sold, \$481.25.

Fourth. That there appears to be no damage sustained by plaintiff other than the loss of profits on the valves sold as before mentioned, and,

Fifth. The master finds that there is due from the defendant to the plaintiff the sum of \$481.25.

The testimony taken by the master is filed herewith.

All of which is respectfully submitted. R. C.,
Special Master.

Dated this — day of —, 1894.

No. 406.

Master's Report. (Another Form.)

[*Caption.*]

To the Judge of the Circuit Court of the United States for the — District of —:

The undersigned, R. C., appointed special master under a decree entered in above case April 9, 1887, a certified copy of which is hereto attached, respectfully submits the following report:

By said decree the master is directed,

First. To take and report to the court an account of the profits which the defendants have received, or which have arisen or accrued to them from the manufacture, use, or sale of said improvement, or from said infringement, and

Second. To ascertain and report the damages which the plaintiff has sustained thereby since August 26, 1879.

This is an action for the infringement of a patent band for wheel hubs, and in the decision handed down on a rehearing of the cause Sept. 30, 1887, the court says:

"The hub in evidence manufactured by defendants shows a band having the overhanging lip at its inner side and the internal vertical or substantially vertical shoulder. The decree will stand, but the accounting will be limited in accordance with, and the injunction modified to conform to, this opinion."

This decision of the court limits the master in this accounting to the particular form of band therein described, and the accounting is made accordingly.

It is agreed between the parties that 2,198 sets of wheel hubs with bands were made between January, 1879, and February 13, 1885, but only a part of the bands so used were of the device described in the above-quoted decision of the court. There is nothing in the evidence to show how many of the hubs so made contained the infringing device.

Plaintiff endeavors to show an established license fee, setting up three licenses for the sale of the patent device, but even if that were a sufficient number to establish a general license fee, an examination of said license shows such conditions as remove them from the category of general licenses for the sale of these specific devices in question. For example:

I. A license was granted by plaintiff to P. & D. to use the infringing device, but it was coupled with other privileges and advantages, viz.:

First. It was conditioned upon plaintiff going into and remaining in the employ of his licensee.

Second. It covered all wheel patents owned by plaintiff, but did not mention the device in question.

Third. The fee for the use of all plaintiff's patents should be fixed by mutual agreement, but should never exceed fifty cents a set.

Fourth. That such license should include the right to use any and all patents for all improvements which plaintiff might subsequently make.

Fifth. That the license should be exclusive so long as the plaintiff remained in his, licensee's, employ.

II. A license was granted to P. & B., but it also included

First. The right to use three different patents.

Second. The right to use any and all improvements which plaintiff might subsequently use and patent.

Third. It binds the licensee to make no competing wheels.

Fourth. It is measurably exclusive, in that plaintiff agrees to limit his license to a specific number.

III. To the W. Wheel Co. which provided,

First. That it should cover two patents and any other which plaintiff might subsequently procure.

Second. That plaintiff should not license more than six parties in the United States, except on failure of such six parties to supply the demands of the trade.

Counsel claim that such a license fee is established by them as constitutes a measure of damages to govern the accounting in this reference, but the only uniformity in these licenses is the fee, which was 50 cents per set of four wheels, and they lack every other element necessary to establish a general license fee.

Counsel for plaintiff also claims that all the wheel hubs made by defendants contain a band similar in principle to the patented devices, and, therefore, that plaintiff is entitled to compensation for all the wheels made by defendants during said period. That portion of the decision of the court already quoted seems to furnish a sufficient answer to this claim. The master can not consider any other device than that which has "the overhanging lip at its inner side and the internal vertical or substantially vertical shoulder." The evidence shows that some of the hubs made by defendants contain a half-oval band, some a square, and some a V shaped band, but how many of each kind were made does not appear. A sample of each style of band so used was exhibited to the master, and all are filed as exhibits in this accounting.

The master finds:

First. There is no established license fee for the use of the said patented device which can be assumed as a measure of damages in this accounting.

Second. It is not shown how many wheel hubs containing said patent device were made by defendants.

Third. In the absence of testimony showing the number of wheel hubs containing said patented device made by defendants the master has no recourse but to find nominal damages due from said defendants to plaintiff, and he therefore so finds.

A draft report, similar in all respects to the foregoing, was submitted to counsel for both parties hereto, thus giving them an opportunity to except to the findings before filing. Counsel for plaintiff filed exceptions, which are hereto attached.

The master has re-examined the testimony bearing upon the questions involved in his findings, and overrules said exceptions.

The testimony taken before the master and the depositions and exhibits offered at the hearings are filed herewith.

All of which is respectfully submitted.

R. C.,
Special Master.

Dated this — day of —, 1894.

No. 407.

Final Decree.

[*Caption.*]

This cause having come on to be heard upon the report of B. R., Esq., as special master, to whom it was referred to take, state, and report an account of damages and profits in accordance with the interlocutory decree herein, which report is dated the — day of —, 1894, and also upon exceptions taken to the said report on the part of the plaintiff, and also on the part of the defendant, and the said cause having been argued by counsel for the respective parties, and due deliberation had thereon,

It is ordered, adjudged, and decreed that the said defendant pay to the said plaintiff the sum of — dollars, which is the amount found by the special master, as stated in his report above referred to, to be due from the defendant to the plaintiff.

It is ordered, adjudged, and decreed that the said defendant pay to the said plaintiff his costs in said suit to be taxed, and that said plaintiff have execution for such costs, and for the sums above decreed, to be paid to said plaintiff.

ACTIONS AT LAW IN PATENT CASES.

No. 408.

Declaration for Infringement after Expiration of Patent.

Circuit Court of the United States for
the — District of —.

A. B., Plaintiff,	}	
<i>vs.</i>		
C. D., Defendant.		At Law, Trespass on the Case (1).

A. B., of the city of —, state of —, who is a citizen of said state of —, and of the United States, plaintiff, complains of C. D., of the city of —, state of —, who is an inhabitant of the — district of —, defendant, of a plea of trespass on the case, and says:

That A. B., of the city of —, state of —, was a citizen of the United States before and at the time of his application for the letters patent hereinafter mentioned; that he was the true, original, and first inventor of a certain new and useful invention fully described in the specification of the letters patent hereinafter mentioned, for an improvement in sewing-machines, and which was not known or used in this country, and not patented or described in any printed publication in this country, or any foreign country, before his invention thereof, and was not in public use, or on sale, in the United States more than two years prior to his application for letters patent of the United States therefor (2).

And that, on the — day of —, 1876, letters patent of the United States, No. —, were issued upon the application of said A. B. for said invention, in due form of law, and delivered to the said A. B., in the name of the United States of America, and under the seal of the patent office of the United States, and was signed by the secretary of the inte-

rior of the United States, and countersigned by the commissioner of patents (3); and that said letters patent did grant to said A. B., his heirs, or assigns, for the term of seventeen years from the — day of —, 1876, the exclusive right to make, use, and sell the said invention throughout the United States and the territories thereof.

And the plaintiff further says, that always hitherto, from the date of said letters patent up to the expiration of the said letters patent, No. —, he has vended to others the right to make and use sewing-machines embodying said invention, to his great advantage and profit.

Yet the defendant, well knowing the premises, did contrive to injure the plaintiff heretofore, to wit: on and after the — day of —, 1885, and up to and on the — day of —, 1890, and during and within the term of seventeen years mentioned in said letters patent, and after the granting of the same, and before the bringing of this suit within the — district of the United States, and elsewhere in the United States, unlawfully, wrongfully, and injuriously, and with intent to deprive the plaintiff of the rights which he might, and otherwise would, have derived from the sale of rights to make and use sewing-machines embodying said invention, and without the license of the plaintiff, and against the will of the said plaintiff, did make, use, and sell, and caused to be made, used, and sold, sewing-machines which contained and employed substantially the invention covered by the said letters patent sued on herein in infringement of the said exclusive rights secured to A. B. by the letters patent aforesaid, contrary to the statute of the United States in such cases made and provided, whereby the plaintiff has been, and is, greatly injured, and has been deprived of large royalties which he might, and otherwise would, have derived from the sale of rights to make and use such sewing-machines, and has sustained actual damages thereby to the amount of — dollars.

Wherefore, by force of the statutes of the United States, the right of action has accrued to the said plaintiff to recover

the said actual damages, and such additional amount not exceeding in all three times the amount of such actual damages as the court may see fit to adjudge and order, besides the costs.

And yet the defendant, though often requested so to do, has never paid same nor any part thereof, but has refused and still refuses so to do.

Wherefore plaintiff prays for judgment in the sum of — dollars, and for his costs.

R. X.,

Attorney for Plaintiff.

(1) R. S., Secs. 4919 and 4920; Walker on Patents, Sec. 418, *et seq.*; Robinson on Patents, Sec. 949, *et seq.* See also Nos. 1 to 4.

(2) Gray *vs.* James, 1 Peters, Circuit Ct. Rep., 482; Walker on Patents, Sec. 425.

(3) R. S., Sec. 4883; Cutting *vs.* Meyers, 4 Wash., 222. See also No. 7.

No. 409.

Verification to Declaration or Plea.

United States of America,

— District of —, ss.

On this — day of —, personally appeared before me A. B., who makes solemn oath that the facts set forth in the above declaration [*or plea*] are true, to the best of his knowledge and belief.

R. C.,

Clerk.

No. 410.

Plea. General Issue (1).

[*Caption, as in No. 408.*]

And the defendant, by his attorney, R. X., comes and defends the wrong and injury when, etc., and says that he is not (*or, they are not, or any or either of them*) guilty of the said supposed grievances above laid to his charge, or any or either of them, or any part thereof, in manner and form as

the said plaintiff has above complained against him, and of this the defendant puts himself upon the country.

S. Y.,

Attorney for Defendant.

[*Verification, as in No. 409.*]

(1) All the ordinary defenses in patent suits may be set up and proved under the general issue, except those specially mentioned in Sec. 4920 of the R. S. of the United States. Of these defenses notice must be served upon the plaintiff in writing. The pleadings in law and equity differ, in that all the defenses relied upon must be stated in the answer in equity, but need not be so stated in a pleading at law, except as specially provided in the statute above referred to.

R. S., 4920; See Robinson on Patents, Secs. 993 and 999, and notes and references cited; N. Y. Pharmacal Co. *vs.* Tilden, 21 Blatchf.; 191, 14 Fed. Rep., 740; Judson *vs.* Bradford, 16 O. G., 3 B. and A., 539.

No. 411.

Plea and Notices of Special Matter (1).

[*Proceed as in No. 410 to the signature, and insert the following:*]

And the defendant gives the following notices in writing of special matter to the plaintiff thirty days before the trial:

The plaintiff will take notice that the above-named defendant will prove, upon the trial of this cause, in bar of the said plaintiff's action, as follows, to wit:

First. That for the purpose of deceiving the public, the description and specification filed by A. B., the patentee aforesaid, in the patent office of the United States, whereon the letters patent sued on were granted, was made to contain less than the whole truth relative to his invention, or discovery [*or, more than is necessary to produce the desired effect which was intended to be produced by the said invention, or discovery*] in the following particulars, viz.: [*here state the particulars.*]

Second. That the said patentee surreptitiously and unjustly obtained the patent sued on for that which was in fact

invented by one J. R., in the city of —, state of —, before the alleged invention of A. B., and that the said J. R. was using reasonable diligence in adapting and perfecting his said invention.

Third. That the said invention and device was not new when produced by the said A. B., and that substantially the same invention and device is shown in printed publications and letters patent of the United States granted prior to the application of the said A. B. for a patent, as follows, to wit:

In letters patent, No. —, granted G. M., May 16, 1870;

In letters patent, No. —, granted S. S., June 15, 1872.

And on page 104 of the "Universal Dictionary of Mechanical Arts," published in Paris, France, by Louis Dumas, at No. — Rue St. Jacques, in 1864, etc., etc.

Fourth. That he was not the original inventor or discoverer of any material and substantial part of the thing patented in letters patent No. —, herein sued on, but that the said invention and every material and substantial part thereof was invented by one S. M. at —, in the state of —, who now resides at —, in the state of —, and that the same was known to be invented by the said S. M. as early as the — day of —, 1870, and prior to the time when it is alleged in the declaration that the same was invented and discovered by A. B., patentee as aforesaid.

Fifth. That the alleged invention mentioned in letters patent No. —, sued upon herein, was in public use and on sale in this country more than two years before the application of the said A. B. for a patent therefor, instances of which said use and sale are more particularly specified as follows:

Known to and used by J. M., at Cincinnati, Ohio, in May, 1865, which said use is known to J. M. and L. N., who reside in Cincinnati, Ohio, and to others.

Sixth. That the alleged invention mentioned in letters patent No. —, sued upon herein, had been previously invented and discovered by one S. L., at —, in the state of

—, and thereafter and before the time when it is alleged in the declaration the same was invented and discovered by A. B., patentee as aforesaid; and as early as the — day of —, 1865, the same was by the said S. L. abandoned to the public, and was, with the consent and allowance of the said S. L., in public use, and used [*or*, publicly offered for sale and sold] at Akron, Ohio, by J. S. & Co., which said use [*or*, exposition for sale and sale] is known to J. S., president of the said company, who now resides at Cincinnati, Ohio, and to R. S., who resides at Chicago, Illinois, and to others.

S. Y.,

Attorney for Defendant.

(1) Only notice of such defenses should be pleaded as the defendant wishes to make in his case, and the remaining paragraphs should be omitted. See R. S., Sec. 4920. Robinson on Patents, Sec. 959 *et seq.*

No. 412.

Replication.

[*Caption, as in No. 408.*]

And the said plaintiff, as to the said pleas of the said defendant, by him above pleaded, of which he has put himself upon the country, doth the like.

R. X.,

Attorney for Plaintiff.

COPYRIGHTS AND TRADE-MARKS.

No. 413.

A Bill in Equity—Infringement of a Copyright (1).

[*Caption. See in No. 67.*]

To the Honorable, the Judges of the Circuit Court of the United States in and for the — District of —.

A. B., of —, in the state of —, and citizen of said state, brings this his bill against C. D., of —, in the state of —, and citizen of said state, and inhabitant of the — district of —, and thereupon your orator complains and says:

That heretofore and prior to securing a copyright for the same, as hereinafter recited, he was the proprietor of a book entitled [*set forth the title*], of which he is informed and believes that E. F., an employee of your orator, citizen of the United States, was the author, compiler, and designer. That so being proprietor of said book, he did deposit in the office of the librarian of congress, prior to the publication of said book, to wit, the — day of —, 1894, a printed copy of the title of said book; and your orator says, upon information and belief, that on the — day of —, 1894, the librarian of congress recorded the name of said book in a book kept by him for that purpose, in the words and manner prescribed by law, as will fully appear from a properly certified copy of said record, which is ready to be produced as your honors may direct.

Your orator further shows that before the day of publication of said book, to wit, on the — day of —, 1894, he

deposited in the mails at —, —, addressed to the librarian of congress at Washington, D. C., two complete printed copies of said book, of the best edition issued.

Your orator further shows that he had caused to be printed on the title-page of the several copies of the said book published by him, the following words, to wit: "Entered according to act of congress in the year 1894 by A. B., in the office of the librarian of congress at Washington, D. C."

On information and belief your orator further shows unto your honors that, by virtue of the premises and the laws of the United States relating to copyrights, he has been vested with a copyright on said book entitled [*set forth the title*], whereby there is secured to him, and his assigns, the exclusive right and liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same, for the term of twenty-eight years from and after the — day of —, 1894.

Your orator further shows unto your honors that he is now the sole and exclusive owner of said copyright, and of all the rights and privileges granted and secured, or intended to be granted and secured thereby.

Your orator further shows that he has invested and expended large sums of money, and has been to great trouble and expense in and about said copyrighted book, in the preparation and publication of the same, and in introducing it to the public, and that said book has been and is of great benefit and advantage to your orator and to the public; and that the public have generally acknowledged and acquiesced in the aforesaid rights of your orator, and your orator believes that he will realize large gains and profits therefrom if piracy and infringement by said defendant and his confederates shall be prevented.

And your orator further shows, upon information and belief, that the defendant, well knowing the premises and the rights secured as aforesaid to your orator, but contriving and intending to injure your orator, and to deprive him of the profits,

benefits, and advantages which might, and otherwise would, accrue to your orator as aforesaid, after the grant of said copyright and before the commencement of this suit, did, at —, without the license, and against the will of your orator, and in violation of his said rights, and in infringement of said copyright, unlawfully, wrongfully, and injuriously print, publish, offer for sale, and sell books which are exact fac-simile copies of your orator's said copyrighted book, or substantial portions thereof.

And your orator further shows, upon information and belief, that, subsequent to the grant of said copyright, the defendant has in — county, at —, and elsewhere in the state of —, offered for sale, and is now offering for sale, and intends to continue to offer for sale, and to sell books which are copied and pirated from, and are fac-simile copies of your orator's said copyrighted book, or substantial portions thereof, and which the defendant and his agents publicly and openly declare to be like A. B.'s book, and to contain all the essential features of A. B.'s book.

All of which actings and doings by the defendant are in violation of your orator's exclusive rights as aforesaid, and to your orator's great and irreparable damage, loss, and injury; by which acts he has been and now is being deprived of great gains and profits which might, and otherwise would, have been obtained by your orator, but which has been received and enjoyed by the defendant by and through his unlawful acts and doings.

And your orator further shows unto your honors, on information and belief, that said defendant has had notice of his said infringement of the rights of your orator in the premises, and has disregarded said notice, and refused to desist from said infringement, and still continues so to do.

And your orator further shows unto your honors, on information and belief, that the defendant has made and realized large profits and advantages from said infringement, but to what extent, and how much exactly, and how many of said

books he has made and sold, your orator does not know, but prays a discovery thereof. And your orator says that the infringement of said copyright by said defendant, and his preparation for and avowed determination to continue said infringement, and other aforesaid unlawful acts in disregard and defiance of the rights of your orator, has the effect to encourage and induce others to venture to infringe said copyright in disregard of your orator's rights.

Wherefore your orator prays that the defendant, C. D., his servants, agents, attorneys, employees, workmen, and confederates, and each and every of them, may be perpetually restrained and enjoined by order and injunction of this honorable court from printing, reprinting, publishing, completing, copying, executing, finishing, and vending books like, or substantially like, or copied, or pirated from the book copyrighted by your orator as aforesaid; and that said defendant may be decreed to pay the costs of this suit, and that your orator may have such further relief as to this honorable court may seem meet, and as shall be agreeable to equity.

May it please your honors to grant to your orator the writ of injunction, issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendant and his servants, agents, employees, workmen, and confederates, and each and every of them, during the pendency of this suit, as hereinbefore, in that behalf, prayed in regard to said perpetual injunction.

And forasmuch as your orator can have no adequate relief except in a court of equity, where matters of this and like nature are properly cognizable and relievable, and to the end therefore that said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may, but not upon oath [the oath being waived], according to his best and utmost knowledge, remembrance, information, and belief, full, direct, and perfect answers make to all and singular the premises, and to all the several matters hereinbefore stated and charged, as fully and particularly as if severally

and separately interrogated as to each and every of said matters, and may be compelled to render an account of the number of copies sold, and pay to your orator the profits by him acquired, and the damages suffered by your orator from such unlawful acts, and that the court may assess said profits and damages [forfeiture of the infringing books being expressly waived].

May it please your honors to grant unto your orator a writ of subpœna, issuing out of and under the seal of this honorable court, directed to said defendant, C. D., commanding him, on a certain day, and under a certain penalty, to appear in this honorable court, and then and there to answer the premises, and to stand to and abide such order and decree as may be made against him. And, your orator will ever pray.

A. B.

R. X.,

Solicitor for Plaintiff.

[*Verification.* See No. 85.]

(1) The circuit court has original jurisdiction without reference to citizenship or value of subject-matter, R. S., Sec. 629, clause 9. As to remedies in equity generally, for infringement of a copyright, see Drone on Copyrights, Chap. XI., and case cited in notes.

No. 414.

Bill in Equity.—Trade-Mark Registered in the United States Patent Office (1).

[*Caption.*]

To the Honorable Judges of the Circuit Court in and for the
— District of —:

B. B. and G. B., citizens of the state of —, residing and doing business at —, in said state, as copartners under the firm name of B. Bros., bring this, their bill of complaint, against C. D., citizen of the state of —, doing business at No. — street, in the city of —, in said state, and an inhabitant of the — district of —.

And thereupon your orators complain, and say that since the year 18— they have been located at —, and have been doing business as a copartnership under the firm name of B. Bros., and during the time since 18— they have been engaged in the manufacture and sale of cough drops. That for more than seventeen years the said cough drops have been of the general appearance as follows: color, black; form, circular; about three quarters of an inch in diameter; flattened on both sides, one side, however, being somewhat rounded, and being about one-quarter of an inch in thickness, having stamped upon one side thereof a star with five points surrounded by a ring at a short distance therefrom, and on the other side stamped B. B. in heavy letters, with a bar above and below the letters; that said stamps upon the faces of said drops have been for seventeen years and more past adopted and used by your orators as their trade-mark for said drops.

That said cough drops have been put up during more than eight years past in pasteboard boxes about three and one half inches long, about two inches wide, and about three quarters of an inch thick, provided with folding ends. The top of each of said boxes has contained, in connection with the representations of the busts of your orators, the following words and letters:

B. Brothers'

B. B.

Cough Drops.

B. B.

Stamped on each drop.

Trade * * Mark.

That upon each of the two ends has been printed "5 Cents," and on one of the sides has been printed "Price 5 Cents," and on the other side have been printed the words "Cough Drops"; that the lettering, directions, and the cuts representing your orators have been printed upon said boxes in black upon a white ground. That at all times, from the

commencement of your orator's business down to the present time, your orators have manufactured their cough drops of the form specified, and placed them on the market in boxes having the peculiar lettering and representations thereon above specified, and that they have adopted such peculiar stamping upon the cough drops themselves, and the cuts representing the busts of two men, and the letters B. B. as their trade-marks, together with the peculiar label and form of printing upon said boxes, a sample of which is annexed to this bill and marked "Schedule B. Brothers' Box"; that said trade-marks and the said peculiar form of label were different from any which had ever before been used to designate cough drops or cough syrups, or other analogous remedies; that the said trade-marks and peculiar form of label and said peculiar words and representations and cuts have been universally known and recognized as indicating that articles having such trade-marks or labels were made by your orators; and that said peculiar form of label, the trade-mark B. B., and the trade-mark consisting of the representation of the busts of two men, became, and ever since have been, valuable property rights of your orators and a protection to purchasers of cough drops and similar remedies made by your orators, and that the said peculiar form of label and the said peculiar letters "B. B." and the representation of the busts of two men have become and are the trade-marks and exclusive property of your orators, and that your orators are entitled to the sole and exclusive use and benefit thereof, and that they are entitled to recover for damages or profits which have resulted or accrued from the infringement of your orator's said rights.

And that your orators further say that they have at all times insisted upon their said trade-marks and their exclusive right to said peculiar label, and that they have notified the public thereof; that the said trade-marks and peculiar form of label have become universally known as the property of your orators, and have been universally respected until the infringement herein complained of.

And your orators further say that for the purpose of informing the public of your orators' rights in the premises, and in order that your orators' title might be made more clear and certain, they have caused the said trade-marks to be registered, according to the statutes of the United States, as appears by the certificates of such registration, to wit: certificate No. —, registered the — day of —, application filed the — day of —, the essential features of which consist of two bust portraits of male figures, representing the B. Brothers, your orators, and certificate No. —, registered the — day of —, application filed on the — day of —, the essential features of which trade-mark consist of the letters "B. B.," as by said original certificate of registration, or duly certified copies thereof, here in court ready to be produced, will more fully and at large appear, a copy of the statement, declaration, and representation of the trade-mark of each of said certificates being hereunto attached and marked respectively, "Schedule trade-mark of two bust portraits," and "Schedule trade-mark B. B."

And your orators further say that said trade-marks, referred to in each of said certificates, are adapted to be used and have been used by your orators in connection with a single package of cough drops for more than seventeen years in commerce with Canada and other foreign countries (2), and very extensively throughout the United States; and that your orators are entitled to the exclusive use of said trade-marks as applied to cough drops, and boxes and packages containing cough drops, cough syrups, confectionery, and analogous remedies, and that said trade-marks have been used by your orators in such commerce in connection with the peculiar label shown in "Schedule B. Brothers' Box."

And your orators further say that the cough drops manufactured and sold by your orators, as aforesaid, have been and are of superior quality, and that said cough drops have been compounded according to your orators' peculiar and exclusive

formula, and that the said cough drops have met with great favor as an alleviation of coughs, colds, and hoarsenesss, and that since the time they were first placed upon the market their reputation has steadily increased and the demand for them has been more and more from year to year, until now your orators' sales amount to more than fifty tons on the average each month.

And your orators further show that heretofore in a suit commenced by your orators in the circuit court of the United States for the — district of —, against A. T. for infringement of your orators' trade-mark rights, said defendant having in place of the letters B. B upon cough drops used the letters A. T., which said defendant stamped upon his cough drops on one side in connection with a star on the reverse side thereof, and said defendant having in place of two male figures, as shown upon the boxes of your orators, substituted the representation or the bust of a male figure substantially like those of your orators, but with some changes in details, a motion for an injunction *pendente lite* was made and a hearing had upon said motion before his honor J. S., judge of said court, upon the pleadings, affidavits, and exhibits; that upon the — day of —, 189—, a decision was rendered in said cause, finding that your orators were entitled to use, have, and enjoy the particular marks adopted by themselves, as above described, and as set forth in the certificates of registration hereto attached, and that the drops made by defendant, with the letters A. T. stamped thereon, were an unlawful and wrongful imitation of those made by your orators, and were in violation of your orators' rights to their trade-mark aforesaid, and the defendant in this suit was enjoined and restrained, until further order of the court, from making or selling or using boxes in infringement of your orators' trade-mark rights, or so nearly like the boxes used by your orators as might be calculated to deceive purchasers, as by a certified copy of said decree here in court, and ready to be produced, will more fully and at large appear, a copy of said decree being hereto attached as "Schedule Exhibit A. T. Decree."

And your orators further say that your orators' exclusive rights in the premises are of very great value in their business, and that the defendant's acts and doings, hereinafter mentioned, in the infringement of your orators' rights, have caused and are causing your orators great and irreparable pecuniary loss and injury; that the amount of such direct damage and injury to your orators, as your orators verily believe, amounts to more than two thousand dollars, exclusive of interest and costs, and your orators verily believe, if continued, will amount to many thousands of dollars.

And your orators further show unto your honors that, notwithstanding their said exclusive possession of said trademarks and said peculiar label, and in violation of your orator's rights, the defendant herein, well knowing the wrong and injury he was thereby doing unto your orators, has made and sold, and is making and selling, in —, and elsewhere in the United States, and for commerce with foreign nations and the Indian tribes, cough drops put up in paper boxes identically like the boxes and labels used by your orators, and described in paragraph three of this bill, except that some changes have been made in the features of the cuts of the two male figures, and except that in place of "B—" the word "D—" has been employed, and "C. D." instead of "B. B.," and "—, —," instead of "—, —." The cough drops made and sold by defendant as aforesaid have stamped thereon a five-pointed star on one side, and on the other the letters "D. D." with a bar below the letters.

And your orators further allege, upon information and belief, that the cough drops made and sold by defendant are of inferior quality, and have been sold by defendant to dealers at a price less than the price at which your orators have sold their cough drops, and that the words "D. D." marked upon defendant's labels do not represent any firm, individuals, or corporation in any way interested in or connected with the manufacture and sale of the defendant's said cough drops; but that the defendant wickedly, fraudulently,

and falsely has adopted the same for the purpose of deceiving the public and inducing purchasers of their inferior and unwholesome product to believe that the same is of the manufacture of your orators herein, and thus to palm off his inferior product upon the public; and that the public have to pay the retail dealers for defendant's inferior and unwholesome product the same that is charged for your orator's superior cough drops, and that the public have been thus deceived and have been induced to purchase defendant's unwholesome product, and that the reputation of your orators has been greatly damaged.

To the end, therefore, that the defendant may, if he can, show cause why your orators should not have the relief prayed, and may make a full disclosure and discovery of all the matters aforesaid, but not upon oath, answer under oath being waived, and according to the best and utmost of his knowledge, remembrance, and information and belief, full, true, direct, and perfect answer make to the matters hereinbefore stated and charged.

And that the defendant may be decreed to account for and pay over to your orators the income and profit thus unlawfully derived from the violation of said trade-marks, and your orators' exclusive rights in and to the use of the same, and your orators' exclusive rights to the said peculiar label, and be restrained from any further violation of said rights, your orators pray that your honors may grant a writ of injunction, issuing out of and under the seal of this honorable court, perpetually enjoining and restraining the said defendant, his clerks, attorneys, agents, servants, and workmen, from any use in any manner of said trade-marks, or any part thereof and of said label of your orators' in violation of your orators' rights as aforesaid. And that your honors, upon rendering of the decree above prayed, may assess, or cause to be assessed, in addition to the profits to be accounted for by the defendant, as aforesaid, the damages your orators have sustained by reason of such infringement.

And your orators further pray that a provisional or preliminary injunction be issued restraining the said defendant from any further infringement of said trade-marks pending this cause, and for such other and further relief as the equity of the case may require, and to your honors may seem meet.

May it please your honors to grant unto your orators, not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, directed to the said C. D., commanding him on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the court shall seem proper, and required by the principles of equity and good conscience.

R. X.,
Attorney for Plaintiff.

(1) The entire Act of July 8, 1870 (R. S., 4937 to 4947), and the Act of August 14, 1876 (19 Stat. at L. 141), relating to trade-marks, are invalid. For construction of these statutes, see Trade-Mark cases, 100 U. S., 82; *Baldwin vs. Franks*, 120 U. S., 687. In framing a bill for infringement of a trade-mark registered under the Act of March 3, 1881, (21 Stat. at L., 502, chap. 138), it is safer practice to make allegations sufficient to sustain a bill on a common law trade-mark. The act of March 3, 1881, was evidently drawn with reference to an intimation of the supreme court in deciding the trade-mark cases (100 U. S. 82). This legislation, however, has been recognized without question as to its validity in *Luyties vs. Holendeer*, 30 Fed. Rep., 632; *Glen Cove Mn'fr Co. vs. Ludeman*, 23 Blatchf. 46; *Pratt Mn'fr Co. vs. Astral Refining Co.*, 27 Fed. Rep., 492. The 8th clause of Sec. 8 of the first article of the Constitution of the United States (patent and copyright clause) does not confer requisite authority of Congress, and the Act of March 3, 1881, evidently refers to the 3d clause of the same section for the requisite authority. See Trade-Mark cases *supra*.

(2) A circuit court has no jurisdiction of suits for the infringement of a trade-mark if the plaintiff and defendant are citizens of the same state, and the bill does not allege that the trade-mark in controversy was used on goods intended to be transported to a foreign country; see *Ryder vs. Holt*, 128 U. S., 525; or used in lawful commercial intercourse with an Indian tribe. *Schumacher vs. Schwenke*, 26 Fed. Rep., 818. In a suit to restrain the infringement of a trade-mark the

amount in dispute in determining the jurisdiction does not depend upon the profits sought to be recovered. *Symonds vs. Greene*, 28 Fed. Rep., 834; see also Act of March 3, 1881, 21 Stat. at L. 502, Sec. 7, last clause, and Sec. 11.

No. 415.

Bill in Equity.—Common Law Trade-mark. (Aliens against Citizens) (1.)

The Circuit Court of the United States
for the — District of —.

A. B., C. D., and E. F., partners as A. B. & Co.,	} In Equity.
Plaintiffs,	
vs.	
G. H. and J. K., partners as G. H. & Co.,	} In Equity.
Defendants.	

To the Honorable, the Judges of the Circuit Court of the United States for the — District of —, sitting as a Court of Equity.

A. B. and C. D., both of city of —, in the Kingdom of Prussia, and Empire of Germany, and both of whom are aliens, and subjects of the King of Prussia and Emperor of Germany, and E. F. of the city of —, in the Republic of France, and who is an alien and citizen of the Republic of France, show unto your honors that they, the said A. B., C. D., and E. F., are copartners, lawfully engaged in business at the said city of —, in said Republic of France, under the firm name of A. B. & Co., and do bring this their bill of complaint against G. H. and J. K., of the city of —, in the county of —, and state of —, who are copartners, engaged in business in said city of —, under the firm name of G. H. & Co., and all of whom are citizens of the said state of —, and inhabitants of said — district of —, and hereinafter referred to as the defendants.

And, therefore, your orators complain and say that they are manufacturers of [champagne wine], doing business at said city of —, and that they are the successors in business of

the original firm of A. B. & Co., of said —, which firm was established during the year 18—; that they now conduct and carry on the business by said firm of A. B. & Co., and their successors, established and built up during many years, and own and occupy the premises by their predecessors occupied, and are vested with all the rights of each and all their predecessors, all and singular, including the good will of their business, and businesses, and their trade-marks, brands, names of trade, and duplicate copies of which have been deposited in the patent office of the United States, and your orators are in all things vested with all the rights and interests of their predecessors in business, all and singular, and are the owners thereof.

And your orators further say that the [champagne wine], by them manufactured, now enjoys, and has for many years enjoyed, a high reputation in the markets of the United States and elsewhere, where it is now and for many years has been sold in large quantities, and that by reason of its superior quality, and the diligent efforts of your orators in the premises, there has been established and now exists in the United States and at the city of —, and elsewhere, a very large and profitable business in the importation and sale thereof, which business is now by them carried on and is a source of great profit.

And your orators further say that they have heretofore introduced into the markets of the United States a certain [champagne wine] of superior quality, which has been known, identified, referred to, and called for as ["Mumm's Extra Dry"], which has long been, and is now, in very great demand, and known, referred to, and distinguished by the said designation [Mumm's Extra Dry," *or*, "Extra Dry Mumm"], and in many instances as ["Extra Dry"], the word ["Mumm"] being understood by reason of the great popularity and extensive use of the said wine.

And your orators further say that their said ["Extra Dry" champagne] has been put up in bottles of the customary

shape and sizes, to which have been applied and attached labels bearing your orators' firm name, the principal label on each bottle being a label of octagonal shape, the central field of which has been occupied by the words and letters "Extra Dry. A. B. & Co.," all as appears by a specimen of the said label hereunto annexed and marked "Plaintiffs' Label." And the said ["Extra Dry" champagne] has also been distinguished and identified by reason of its bearing a certain rose-colored capsule, as will more fully appear by a bottle of plaintiffs' said [wine] herewith produced, marked ["Plaintiffs' Wine"], and made a part hereof.

And your orators further say that the said label hereto attached has been used without change for a period of more than — years past, and is now in use, and your orators aver that they have the exclusive right to use the said label, and also the said capsule, and that the same are their property for the uses and purposes aforesaid, to which they are entitled to the exclusion of all others.

And your orators further say, upon information and belief, that the said defendants are engaged in business as dealers in [wines and liquors] in the city of —, and that the said defendants have, well knowing your orators' rights in the premises, and since your orator's rights were acquired, and since they became exclusively entitled in the premises as aforesaid, to wit, since the — day of —, 18—, in said — district of —, and elsewhere, and wholly without your orators' consent, and in violation of their rights aforesaid, fraudulently and unlawfully offered and sold a so-called [champagne wine] of very inferior quality, not manufactured by or for your orators, which has been put up and contained in bottles resembling those used by your orators, to which they have attached or applied a label, or labels, consisting in part of the words and letters ["Mumm's Extra Dry, S. B. and G. D."], the labels being of substantially the same size and shape as the label used by your orators and hereinbefore described, and a specimen of which labels so by the defend-

ants used is annexed to the bottle produced herewith, marked ["Defendant's Wine"], and made a part hereof.

And your orators in like form and manner charge that the said defendants have made use of a rose-colored cap like that used by your orators, and hereinbefore described, as appears by a specimen of said cap forming a part of the exhibit herewith produced, marked ["Defendant's Wine"], which exhibit is a bottle of the [wine] actually sold by the defendants, and which is made a part hereof.

Your orators say, on information and belief, that the said so-called [champagne] of the defendants, sold by the defendants, as hereinbefore recited, and marked, labeled, and identified as aforesaid, is a cheap and inferior liquid manufactured in the United States, and that the statements of said label hereto attached, marked "Defendant's Label," are all and singular without foundation. There is no such house or firm in existence at —, or elsewhere, as "S. B. and G. D.," nor is there any such firm in New York as "W. G. & Co.," nor is the so-called [wine] of the defendants an ["Extra Dry" champagne].

Your orators' representatives in the United States are the firm of "F. D. & Co.," and who also represent "Messrs. D. & Co.," of —, for which reason your orators believe the names "B. & D." were associated together and used in said label.

Your orators charge that the bottle of [wine] herewith produced, marked ["Defendant's Wine,"] was actually sold by the defendants at the time and place aforesaid, and that the defendants have also sold a large number of other bottles of [wine] in every way like it, as and for your orators' [wine], and a wine of their production, and as their well-known ["Extra Dry,"] and as and for ["Mumm's Extra Dry,"] and the champagne hereinbefore referred to, in violation of your orators' rights in the premises, and to their great loss and injury.

And your orators say that the acts of the defendants hereinbefore recited, and the false and fraudulent use of the word

["Mumm,"] and the said label designated "Defendant's Label," constitutes an unfair and fraudulent competition in business and are inequitable and unlawful, and have enabled and necessarily have the effect of causing the sale and substitution of the [wine] bearing the defendants' said label for the wine of your orators, to their great injury, and to the injury of the public.

And your orators further say that by reason of the premises aforesaid, and their long, continuous, and uninterrupted use of said words, ["Mumm's Extra Dry,"] which designation has been by them and their predecessors used as aforesaid continuously and exclusively for a period of not less than — years last past, and by reason of the very large and valuable business and good-will created by them in the United States, they have acquired in respect of the designation ["Mumm's Extra Dry "] certain rights which will be protected in equity as against the false and fraudulent use by the defendants of the said designation as hereinbefore set forth, and which rights they pray may be protected as hereinafter more specially prayed.

And your orators further show that they cannot with certainty state the exact amount of the profits diverted by the said defendants, but believe the same to be of the full sum of five thousand dollars, and so charge the fact to be, and pray that the said defendants make full and true disclosures as to the same, and may be decreed to account therefor in full, and otherwise to respond in damages as may appear to be equitable.

To the end, therefore, that your orators may obtain relief in the premises in this honorable court where they alone can obtain relief, they humbly pray :

First. That the said G. H. & J. K. may be made defendants to this bill, and compelled to answer each and every allegation therein contained, but not under oath, the same being waived and as fully and directly interrogated as to each.

Second. That the said G. H. and J. K. may be compelled to render, before a commissioner of this court, a full, true

perfect, and complete account of all profits diverted from your orators, or made by the unlawful use of the word ["Mumm,"] or by the sale of goods in connection with the name ["Mumm "] shall have been by him unlawfully used, and may be decreed to pay unto your orators the full amount of such profits.

Third. That the said G. H. and J. K., their agents and servants, and all claiming or holding through or under them, be forever enjoined and restrained from in any form or manner whatsoever making use of the name ["Mumm "] in connection with any fluid not manufactured by your orators, having the characteristics of [champagne], and from using said word ["Mumm "] as part of a label or labels, and from using it as part of a mark or brand, and from in any way attaching, affirming, or applying the name ["Mumm "] by means of labels or otherwise, to bottles containing a fluid not of your orators' manufacture, having the characteristics of [champagne wine], and from making use of labels like the label designated "Defendant's Label," and otherwise in every way enjoining and restraining them from any and every unlawful and untruthful use of the said name ["Mumm,"] and any and every name or word which is substantially like it.

Fourth. That a preliminary injunction may be issued without delay, restraining the said G. H. and J. K. in every way as prayed in the preceding paragraph numbered three.

Fifth. And, finally, to the end that equity may become and the relief herein prayed for, and all other relief that it may be righteous in the premises to administer, may be afforded your orators, may it please your honors such relief fully to grant, and to award against the said G. H. and J. K. a writ of subpœna *ad respondendum* of the United States of America, issuing out of and under the seal of this honorable court, commanding them on a day certain therein to be named, and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular

the premises, and to stand to, perform, and abide such further order, direction, and decree as may be made against them.

And your orators as in duty bound will ever pray.

X. & X.,
Solicitors for Plaintiffs.
R. X.,
of Counsel.

United States of America,

State of —,

County of —, ss.

A. D., being duly sworn, deposes and says as follows, to wit:

I am a member of the firm of F. D. & Co., of the city of —, in the county and state of —, which said firm are now and have been for upwards of fifteen years last past, the sole agent of the plaintiffs in the United States, for the importation and sale of plaintiffs' [champagne wine]. I have read the foregoing bill of complaint and know the contents thereof; I know of my own knowledge that all the matters and things stated concerning the acts of the plaintiffs are true, and as to all other matters and things, I verily believe them to be true.

The plaintiffs reside in Europe, which is the reason this affidavit is made by me. A. D.

Sworn to and subscribed to before me this — day of —, 1891. J. N.,

[Seal.]

Notary Public in and for — County.

(1) Taken from the record in *Peter H. Von Mumm, et al., vs. Morris Mihalovitch, et al.*, in the Circuit Court of the United States for the Southern District of Ohio. See note to No. 414.

No. 416.

Allegation of Assignment Before Bringing Suit.

See form No. 340.

No. 417.**Allegation of Prior Adjudication.**

See form No. 343.

No. 418.**Declaration at Law in Copyright Case.**

The pleader will find sufficient guide in form of Declaration in Patent Case (No. 408), and Bill for Infringement of Copyright (No. 413).

No. 419.**Declaration at Law; Infringement of a Registered Trade-Mark (1).**

[*Caption and commencement. See forms Nos. 1 to 4.*]

For that whereas the said plaintiff, for divers years before and at the time of the committing of the grievances hereinafter next mentioned, did manufacture, vend, and sell, and continued to manufacture, vend, and sell, and still does continue to manufacture, vend, and sell, for profits, in commerce with Canada and other foreign countries (2), and throughout the United States, divers large numbers of a certain reaping-machine called the "Ohio," which said machine the said plaintiff was then, and still is, used and accustomed to sell, each machine bearing a representation of "Time" with a scythe, and the word "Ohio" in raised characters as a trade-mark therefor.

And the said plaintiff says, that being then domiciled at —, in the state of —, and for the purpose of informing the public of his rights in the premises, and in order that his title might be made more clear and certain, caused said trade-mark to be registered according to the statute of the United States, as appears by the certificate of such registration, to wit: Certificate No. —, registered the — day of —, 1894, which certificate was duly granted as

aforesaid to remain in force for thirty years from that date, and was in full force when the grievances hereinafter complained of were committed, the essential features of which trade-mark consists in [*state what*, as a representation of "Time" with a scythe, and the word "Ohio" in raised characters], as by said original certificate of registration, or a duly certified copy thereof, here in court ready to be produced, will more fully and at large appear, a copy of the statement, declaration of the registration of the trade-mark, and of said certificate being hereto attached, and made part hereof, and marked "A."

And the plaintiff further says that the said trade-mark referred to in the said certificate is adapted to be used, and has been used by him in connection with reaping-machines for more than — years, in commerce with Canada and other foreign countries, and very extensively throughout the United States, and that he has been and is entitled to the exclusive use of the said trade-mark as applied to reaping-machines.

And the said plaintiff further says that before, and at the time of committing the grievances hereinafter next mentioned, he had gained and acquired great fame and reputation with the public on account of the excellent properties of the said reaping-machines so by him manufactured, vended, and sold, whereby the said plaintiff daily acquired and obtained great gain and profit. Yet the said defendant, well knowing the premises, but contriving to injure the said plaintiff in his said sale of reaping-machines, and to deprive him of the great gains and profits which the said plaintiff would otherwise have acquired by manufacturing, vending, and selling the said machine, did, on the — day of —, 1894, and at divers other times before and afterwards, and before the commencement of this suit, unlawfully and wrongfully, injuriously, deceitfully, and fraudulently, against the will, and without the license or consent of the said plaintiff, manufacture and make, and cause to be

manufactured and made, divers, to wit: Five hundred reaping machines, marked in imitation of, and bearing an almost exact copy of, the said plaintiff's trade-mark, to wit, [the said representation of "Time" with a scythe, and the word "Ohio" in raised characters,] as hereinbefore set forth, in order to denote that the reaping-machine of the said defendant was the genuine reaping-machine manufactured, vended, and sold by the said plaintiff; and did knowingly, wrongfully, injuriously, deceitfully, and fraudulently vend and sell, for his own lucre and gain, the last-mentioned reaping-machines; by reason of which said premises the said plaintiff has been greatly injured, and deprived of great profit and advantage, in being hindered and prevented by the said defendant from selling, vending, and disposing of divers large numbers, to wit, five hundred of the said reaping-machines, which the said plaintiff would otherwise have sold, vended, and disposed of, and has thereby sustained actual damage to the amount of ten thousand dollars.

Yet the said defendant, though requested, has never paid the same, or any part thereof, to the said plaintiff; but has refused, and yet refuses so to do.

Wherefore the plaintiff prays judgment in the said sum of ten thousand dollars, and for costs herein.

(1) See note to No. 414.

(2) It must appear that the trade-mark was used on goods in commerce with foreign countries, or the Indian tribes, in order to bring the case within the statute. Act of March 3, 1881, 21 St. at L., 502.

No. 420.

Appearance.

See Nos. 11, 12, and 13.

No. 421.

Security for Costs.

For form of Motion for Additional Security for Costs, see No. 220, and for form of Cost Bond, see No. 36.

No. 422.**Amendment.**

Consult Nos. 234, 235, and 236.

No. 423.**Replication.**

See No. 218.

No. 424.**Limiting Time within which to take Evidence.**

For forms of Motion to Assign Time and Order on the same, see Nos. 244 and 245.

No. 425.**Depositions.**

For forms for Stipulation Appointing Notary Public and Examiner, Notice for Taking Depositions, Commencement for Depositions, Certificate, see Nos. 253 to 260, and for form for Transmission, see No. 26.

No. 426.**Depositions De Bene Esse.**

Consult Nos. 22 to 26.

No. 427.**Costs.**

For form, see Nos. 27 and 28.

No. 428.**Stipulation to Submit Cause on Brief.**

For form, see No. 267.

No. 429.**Master.**

For forms of Decree Referring Cause to Master, Oath of Master, Summons by Master, Master's Report, Exceptions to Master's Report, see forms under titles "Equity," "Receivers," and "Patents."

No. 430.**Preliminary Injunction.**

Consult forms under title "Patents."

No. 431.**Contempt Proceedings.**

See forms under title "Patents."

No. 432.**Decree Dismissing Bill.**

See form Nos. 268 to 270.

No. 433.**Final Decree (Copyright Case) (1).****[Caption.]**

This cause came on to be heard this — day of —, upon the bill, and answer, and the master's report, and was argued by counsel; on consideration whereof, it is ordered, adjudged, and decreed by the court that the master's report be, and the same hereby is approved and confirmed; and thereupon it is further ordered, adjudged, and decreed by the court that the said defendants be, and they hereby are severally and perpetually restrained and enjoined from printing, selling, publishing, or exposing to sale, or

causing, or being in any way concerned in the printing, publishing, selling, or exposing to sale of any copy or copies of the whole or any part of the [three hundred and fifty] pages, copied as reported by the master, in said [*state name of book or publication*], mentioned in the bill and answer, published by the defendants from [*said book or publication*], mentioned in the bill and answer, published by the plaintiffs, the plaintiffs waiving the account prayed for in the bill, the court does not order such account.

(1) *Folsom vs. Marsh*, 2 Story C. C., 100. Consult also forms of decrees under titles "Patents" and "Equity."

No. 434.

Final Decree (Trade-Mark Case) (1).

[*Caption.*]

This cause came on to be heard this —— day of —— upon the bill, answer, and proofs in the cause, and was argued by counsel on behalf of the plaintiffs, no counsel appearing for the defendants (the counsel who had previously appeared for them having voluntarily withdrawn from the cause).

On consideration whereof, it is ordered, adjudged, and decreed by the court that a perpetual injunction be granted in the premises according to the prayer of the bill, and that the plaintiffs do recover costs against the defendants, to be taxed by the clerk under the direction of the court.

(1) *Taylor vs. Carpenter*, 3 Story, C. C., 458. Consult also forms of decrees under titles "Patents" and "Equity."

No. 435.

Final Decree—Trade-Mark Case (Another Form) (1).

This cause came on to be heard this —— day of —— upon the pleadings and proofs in the case, and was argued by counsel on behalf of the defendant as well as of the plaintiff, and due consideration being had thereof, it is ordered, ad-

judged, and decreed, and this court by virtue of the power therein vested, does order, adjudge, and decree that the defendant, C. D., his attorneys, servants, and agents be, and they are hereby perpetually enjoined and restrained from making, devising, or causing to be made or devised, purchasing or procuring any marks, stamps, labels, or tickets described in the bill of complaint in this action as in use by the defendant upon tickings possessed and sold by him, and that they be in like manner enjoined and restrained from using the said marks, stamps, labels, or tickets upon any ticking whatever in their possession, or under their control, or offered or kept for sale by them, or on their account or for their benefit. And that they be in like manner enjoined and restrained from selling, keeping, or offering for sale, any tickings bearing thereon any such stamp, mark, label, or ticket. And that they be in like manner enjoined and restrained from making, devising, or causing to be made or devised, purchasing or procuring, or in any way or manner using for or upon any tickings whatever, any stamp, mark, label, or ticket similar to the said stamp, mark, label, or ticket of the plaintiff, or having thereon the letters A. C. A., or being in any manner an imitation, whether in whole or in part, of the said stamp, mark, label, or ticket of the plaintiff. And that they be in like manner enjoined and restrained from selling, keeping, or offering for sale any tickings as the real A. C. A. tickings which are not so, and for that purpose, from resorting to any device, deceit, fraud, or misrepresentation whatever, by the use of any stamp, mark, label, or ticket, or otherwise. And that they be in like manner enjoined and restrained from, in any manner, using the letters A. C. A. on goods, or on the wrappers or covering thereof.

(1) Taken from the record in *Amoskeag Mfg. Co. vs. Spear*, 2 Sand. S. C., 599.

No. 436.

Writ of Injunction

See Nos. 61 and 402.

CRIMINAL PROCEEDINGS.

BEFORE U. S. COMMISSIONERS.

No. 437.

Affidavit of Complaint (1).

The United States of America,
— District of —, City of —, ss.

Before me, J. N., a commissioner of the circuit court of the United States for the — district of —, personally appeared this day E. P., who being first duly sworn, deposes and says that on the — day of —, 1894, at —, in the district aforesaid, L. H., in violation of Section —, U. S. Rev. Statutes, did unlawfully, knowingly, and willfully, [*or, feloniously*], [*here state the facts necessary to constitute an offense against the laws of the United States*, as, for example, “misapplied the funds, moneys, and credits of a banking association, to wit, the — National Bank, an association duly incorporated under the banking laws of the United States, in this, to wit, that the said L. H., president of the said association, did, then and there, without the authority of the directors of said association, issue certain certificates of deposit, to wit, one certificate of deposit, No. —, for the sum of \$—, issued to himself, with intent then and there to injure and defraud the said association”], contrary to the form of the statute in such case made and provided.

E. P.

Sworn to before me and subscribed to in my presence
this — day of —, 1894.

J. N.,

[Seal.] Commissioner of the Circuit Court of the
United States for the — District of —.

No. 438.**Warrant of Arrest.**

The President of the United States of America to the Marshal of the United States for the — District of —, and his Deputies, or any or either of them:

Whereas complaint on oath and in writing has been made before me, a commissioner of the circuit court for the — district of —, charging that L. H. did, on or about the — day of —, in the year of our Lord 18—, at —, in said district, unlawfully and willfully, etc. [*according to the facts set forth in the affidavit*] contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States;

Now, therefore, you are hereby commanded in the name of the President of the United States to apprehend the said L. H. and bring his body forthwith before me, or any other commissioner having jurisdiction of the case, to answer the said complaint and to be dealt with according to law for the said offense.

Given under my hand and seal this — day of —, in the year of our Lord 18—. J. N.,

Commissioner of the Circuit Court of the
United States for the — District of—.

[Seal.]

Approved.

J. H.,

U. S. Attorney.

No. 439.**Temporary Recognizance.**

The United States of America,
— District of —, City of —, ss.

Be it remembered that on this — day of —, 1894, before me, J. N., a commissioner duly appointed by the

circuit court of the United States for the said — district of —, personally came L. H. as principal, and B. H., E. F., and G. H. as sureties, and jointly and severally acknowledged themselves to owe the United States of America the sum of — dollars, to be levied on their goods and chattels, lands and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such, that if the said L. H. shall personally appear before me, J. N., a commissioner as aforesaid, at my office, No. — — street, in the city of —, on the — day of —, to answer the charge of [*name crime charged*], and then and there abide the order of said commissioner, and not depart from said district, then this recognizance to be void; otherwise to remain in full force and virtue.

B. H.

E. F.

G. H.

Taken and acknowledged before me on the day above written.

J. N.,

[Seal.]

Commissioner of the Circuit Court
of the United States for the —
District of —.

No. 440.

Justification of Surety to Bond.

The United States of America,
— District of —, City of —, ss.

B. H., of No. — street, in the city of —, in said district, and E. F., of No. — street, in the city of —, in said district, and G. H., of No. — street, in the city of —, in said district, sureties on the foregoing recognizance, make oath, and say each for himself, that he is a free-holder in the city of —; that he is worth the sum of \$—, over and above his just debts and liabilities, in property subject

to execution and sale, and that his property consists of [*here state the property of each surety separately*].

B. H.

E. F.

G. H.

Sworn to before me this — day of —, 1894.

J. N.,

[Seal.]

Commissioner of the Circuit Court
of the United States for the —
District of —.

No. 441.

Release of Sureties (1).

[*In case the sureties wish to surrender their principal the following indorsement should be made on the bond given above:*]

The defendant, L. H., surrendered on this bond by his sureties, and accepted by the United States attorney, and the sureties are hereby released this — day of —, 1894.

J. N.

[Seal.]

Commissioner of the Circuit Court
of the United States for the —
District of —.

(1) See R. S., Sec. 1018; Desty's Fed. Proc., Sec. 551.

No. 442.

Final Recognizance for Appearance Before Circuit or District Court.

The United States of America,
— District of —, City of —, ss.

Be it remembered that on this — day of —, 1894, before me J. N., a commissioner duly appointed by the circuit court of the United States for the said — district of — personally came L. H., as principal, and B. H., E. F., and G. H., as sureties, and jointly and severally acknowl-

edged themselves to owe the United States of America the sum of \$—— to be levied on their goods and chattels, land and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such that if the said L. H. shall personally appear before the circuit court of the United States for the —— district of ——, held in the city of ——, in the district aforesaid on the first day of the next regular term, then and there to answer the charge of [*here set forth offense charged in the affidavit*], and then and there abide the order of the said court and not depart from said district without leave, then this recognizance to be void, otherwise to remain in full force and virtue.

L. H.

B. H.

E. F.

G. H.

Taken and acknowledged before me on the day above written.

J. N.,

[*Seal.*]

Commissioner of the Circuit Court
of the United States for the ——
District of ——.

[*For justification of sureties, see No. 440.*]

No. 443.

Temporary Mittimus.

The United States of America,
—— District of ——, City of ——, ss.

The President of the United States of America to the
keeper of the jail in —— County, of the State of ——,
Greeting:

Whereas L. H. has been arrested upon the oath of E. P.,
for having on or about the —— day of ——, 1894, at ——,
in the district aforesaid, unlawfully [*here set forth the offense
charged in the affidavit*], and has not been examined by me,

J. N., a commissioner of the circuit court of the United States for the ——— district of ———, and has been required to give bail in the sum of ——— dollars for his appearance before me on the ——— day of ———, at ten o'clock a. m., with which requisition he has failed to comply; this is therefore to command you in the name and by the authority aforesaid to receive the said L. H., prisoner of the United States of America in the jail of said county, there to remain until he be discharged by due course of law.

Given under my hand and seal in the district aforesaid on the ——— day of ———, 1894.

[Seal.]

J. N.,

Commissioner of the Circuit Court
of the United States for the ———
District of ———.

No. 444.

Final Mittimus.

The United States of America,
——— District of ———, City of ———, ss.
The President of the United States of America to the Marshal of said District, and to the keeper of the jail in
——— County, of the State of ———, Greeting:

Whereas L. H. has been arrested on the oath of E. P. for having on or about the ——— day of ———, at ———, in the district aforesaid, unlawfully, etc., [*here set forth the offense charged in the affidavit*] and has been examined by me, J. N., a commissioner of the circuit court of the United States for the said ——— district of ———, upon the aforesaid charge, and it appearing to me that said offense has been committed, and probable cause shown to believe said L. H. committed said offense, and said L. H. has been required to give bail in the sum of ——— dollars for his appearance at the first day of the next regular term of the ——— court for the ——— district of ———, at ———, which requisition he has failed to comply with.

This is therefore to command you, in the name and by the authority aforesaid, to commit the said L. H. to the custody of the jailer of said county, and you, the keeper of said jail in said county, to receive the said L. H., prisoner of the United States of America, in the jail of said county, there to remain until he be discharged by due course of law.

Given under my hand and seal in the said district aforesaid this — day of —, 1894. J. N.,

[Seal.]

Commissioner of the Circuit Court
of the United States for the —
District of —.

No. 445.

Return by the Marshal on the above Mittimus.

Received this mittimus, with the within-named prisoner, on the — day of —, 1894, and on the same day I committed the said prisoner to the custody of the keeper within-named, with whom I left at the same time a certified copy of this mittimus.

H. C.,

United States Marshal for the — District of —.

Dated —.

No. 446.

Recognizance of Witnesses.

The United States of America,
— District of —, City of —, ss.

Be it remembered that on this — day of —, 1894, before me, J. N., a commissioner of the circuit court of the United States for the — district of —, personally came [*set forth names of witnesses*], and acknowledged themselves to owe and be indebted to the United States of America in the full and just sum of — dollars, to be levied on their goods and chattels, lands and tenements, if default should be made in the conditions following:

The conditions in this recognizance are such that if the above-named — [here insert names of witnesses], shall personally appear before the district [or, circuit] court of the United States for the — district of —, on the first day of its next term thereof, to be begun and held at —, in the said district, then and there to testify in a cause wherein the United States are plaintiffs, and L. H. is defendant, on the behalf of the United States, and shall not at any time be absent from said court without leave, then this recognizance to be void; otherwise to remain in full force and virtue.

In testimony whereof the obligors have hereunto set their hands the day and year above written.

Signature of witnesses: —. [Seal.]
 —. [Seal.]
 —. [Seal.]

Subscribed in my presence and acknowledged before me this — day of —, 1894. J. N.,

United States Commissioner for the
 [Seal.] — District of —.

No. 447.

Subpœna for Witnesses.

The United States of America,
 — District of —, City of —.

The President of the United States of America to the Marshal of the — District of —:

You are hereby commanded to summon J. K., L. M., and W. C., if they are to be found in your district, to be and appear before me, J. N., a commissioner of the circuit court of the United States for the — district of — aforesaid, at my office, No. —, — street, in the city of —, state of —, on the — day of —, 1894, at ten o'clock a. m., to give testimony and the truth to say in a cause pending before me, wherein the United States are plaintiffs, and L. H. defendant, in behalf of the United States; hereof fail not,

under penalty of the law, and have you then and there this writ.

Given under my hand and seal this — day of —, 1894.

J. N.,

1 [Seal.]

Commissioner of the Circuit Court
of the United States for the —
District of —.

No. 448.

Affidavit of Attendance.

The United States of America,

— District of —, ss.

Before me, J. N., a commissioner of the circuit court of the United States for the — district of —, personally came M. H., who makes oath and says that he has attended the examination in the cause of the United States against L. H., charged with [murder, embezzling money, or as it may be], as witness in behalf of the United States, — days; that he resides — miles from the place where said examination was held, for which attendance and mileage while traveling to and returning from said examination he claims the compensation allowed by law.

M. H.

Sworn to and subscribed to before me this — day of —, 1894.

J. N.,

[Seal.]

United States Commissioner.

No. 449.

Order to Pay Witness.

The United States	}	[The charge against the defendant.]
vs.		
L. H.		

This is to certify that the several persons hereinafter named have attended before me as witnesses in behalf of the United States in the above-entitled cause, and that they are

entitled to receive from the United States the sum set opposite their respective names, for attendance and mileage, which said sum the marshal is hereby ordered to pay the said witnesses.

[Here should follow the names of the witnesses who attended, number of miles traveled, amount due, and should be signed below by the commissioner with his official seal and title.]

No. 450.

Transcript from Commissioner.

Before J. N., Commissioner
of the Circuit Court of the
United States for the —
District of —.

J. H.,
Attorney for the United
States.

The United States
vs.

J. W.,
Attorney for the Defendant.

L. H.

Two affidavits and complaints of E. P. taken and filed, charging that on or about the — day of —, 1894, at —, in the — district of —, the said L. H., defendant herein, did violate Sections — of the United States Revised Statutes, contrary to the form of the statute, etc.

June 21, 18—, issued warrant for arrest of defendant to United States marshal.

June 22, 18—, issued three subpoenas for witnesses to United States marshal.

June 21, 18—, warrant returned, executed by arrest of defendant at —, in the district of —, on the 21st day of June, 18—.

June 21, 18—, defendant present in court, waived examination; bail fixed at \$—.

June 22, 18—, defendant present in court; arrested upon second warrant.

[Continue with docket entries of all proceedings before the commissioner, after which follows the transcript of the record before said commissioner, and conclude as follows:]

The United States of America,
 — District of —.

I, J. N., a commissioner of the circuit court of the United States in and for the said district, do hereby certify that the foregoing writing is a true transcript of the entries on my docket in the cause therein named, and the process, writs, and papers in said cause are hereby returned unto the circuit court of the United States for the — district of — in pursuance of law.

In witness whereof I hereunto set my hand and seal at my office, in —, in said district, this — day of —, 1894.

[Seal.]

J. N.,
 Commissioner of the Circuit Court
 of the United States for the —
 District of —.

No. 451.

Affidavit for Search Warrant (Internal Revenue).

The United States of America,
 — District of —, ss.

Be it remembered, that on this day, before me, J. N., a commissioner of the circuit court of the United States for the — district of —, came A. B., who being by me duly sworn, deposes and says that he has good reason to believe, and does verily believe, that a fraud upon the revenue of the United States has been and is being committed upon and by use of a certain [*state the facts as may be*], being the premises of G. W., and being situate in the city of —, in the county of —, and state of —, and within the district above-named.

A. B.

Sworn to before me, and subscribed to, in my presence this — day of —, 1894.

[Seal.]

J. N.,
 Commissioner of the Circuit Court of the
 United States as aforesaid

No. 452.**Search Warrant (Internal Revenue).**

The United States of America,

— District of —, ss.

To S. W., Internal Revenue Officer of the United States for the — District of —, and to his Deputies, or any of them:

Whereas complaint on oath, and in writing, has this day been made before me, J. N., a commissioner of the circuit court of the United States in and for the said district, by A. B., alleging that he has reason to believe that a fraud upon the revenue of the United States is being committed, upon and by use of a certain [*state facts as in affidavit*], being the premises of G. W., and being situate in the city of —, in the county of —, and state of —, and within the district above named.

You are therefore hereby commanded, in the name of the President of the United States, to enter said premises with the necessary and proper assistance, and there diligently to investigate and search into and concerning said fraud, and to report and act concerning the same as required by law.

Given under my hand, on this — day of —, 1894.

[*Seal.*]

J. N.,

Commissioner of the Circuit Court of the
United States as aforesaid.

No. 453.**Affidavit for Search Warrant under Act of July 10, 1891.**

The United States of America,

— District of —, ss.

Be it remembered, that on this day, before me, J. N., a commissioner of the circuit court of the United States for the — district of —, came A. B., who, being by me duly sworn, deposes and says that he has good reason to believe,

and does verily believe, that the manufacture of counterfeit money, and the concealment of counterfeit money, and the manufacture and concealment of counterfeit obligations and coins of the United States [*or any foreign government, naming it*], and the manufacture and concealment of dies, hubs, molds, plates, and other things fitted and intended to be used for the manufacture of counterfeit money, coins, and obligations of the United States [*or any foreign government, naming it; or, of a bank doing business under the authority of the United States, or of any state or territory, naming it; or, of a bank doing business under the authority of a foreign government; or, of a political division of a foreign government in —*], is being carried on and practiced upon the premises of G. W., and being situate in the city of —, in the county of —, and state of —, and within the district above named.

A. B.

Sworn to before me, and subscribed in my presence, this — day of —, 1894.

J. N.,

[Seal.]

Commissioner of the Circuit Court of the
United States as aforesaid.

No. 454.

Search Warrant under Act of July 10, 1891.

The United States of America,

— District of —, ss.

To the Marshal of the United States for the — District of —, or to — [*naming the special deputy*]:

Whereas complaint on oath, and in writing, has this day been made before me, J. N., a commissioner of the circuit court of the United States in and for the said district, by A. B., alleging that he has reason to believe and does believe that [*state the facts as in affidavit*], being the premises of G. W., and being situate in the city of —, in the county of —, and state of —, and within the district above named.

You are therefore hereby commanded, in the name of the President of the United States, to enter said premises with the necessary assistance, in the daytime only, and there search for any such counterfeit money, coins, dies, hubs, molds, plates, and other things, and of any such obligations, and if any such be found, to seize and secure the same, and to make return thereof to the proper authority.

Given under my hand and seal this — day of —, 1894.

[Seal.]

J. N.,

Commissioner of the Circuit Court of the
United States as aforesaid.

No. 455.

Seaman's Wages. Proceedings Before Commissioner.

For forms, see under title "Admiralty."

POOR CONVICT.

No. 456.

Application for Discharge (1).

The United States of America,

— District of —.

The United States, $\left\{ \begin{array}{l} \text{Application for discharge from im-} \\ \text{prisonment under R. S., Sec. 1042.} \end{array} \right.$
vs.
 L. H.

To J. N., a Commissioner of the Circuit Court of the United States for the — District of —:

Your petitioner represents and states that he was sentenced to pay a fine of \$— and costs by the district [*or*, circuit] court of the United States for the — district of —; that he has been imprisoned for thirty days in the — county jail, in the state of —, for non-payment of such fine and costs, and that he is unable to pay the same; wherefore he hereby makes application in writing for discharge from imprisonment in the — county jail, under the provisions of Section 1042 of the Revised Statutes of the United States.

L. H.,

Dated this — day of —, 1894.

Applicant.

(1) See Desty's Fed. Proc., Sec. 578.

No. 457.

Mandate to Jailer to Produce Prisoner.

The United States of America,

— District of —.

The United States of America to the Jailer of — County,
 Greeting:

Whereas L. H. has this day made an application in writing before J. N., a commissioner of the circuit court of the

United States for the district aforesaid, for a discharge from imprisonment in the — county jail, in the state of —, under the provisions of Section 1042 of the Revised Statutes of the United States.

This is therefore to command you to produce the body of said L. H. forthwith before me, J. N., a commissioner of the circuit court of the United States for the — district of —, at No. — street, in the city of —, in said district, and the marshal of the district aforesaid is directed to execute this mandate.

In witness whereof I hereunto set my hand and seal this — day of —, 1894.

[Seal.]

J. N.,
Commissioner of the Circuit Court
of the United States for the —
District of —.

No. 458.

Oath of Poor Convict (1).

The United States of America,
— District of —.

The United States,	{	Application for discharge from imprisonment under R. S., Sec. 1042.
<i>vs.</i>		
L. H.		

I, L. H., do solmenly swear that I have not any property, real or personal, to the amount of \$20.00, except such as is by law exempt from being taken on civil precept for debt by the laws of [*state where oath is administered*]; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit, so help me God.

L. H.

Subscribed and sworn to before me this — day of —, 1894.

[Seal.]

J. N.,
Commissioner of the Circuit Court
of the United States for the —
District of —.

(1) This form of oath is prescribed by statute. See R. S., Sec. 1042; Desty's Fed. Proc., Sec. 578.

No. 459.

Certificate of Discharge.

The United States of America,
 ———District of ———.

The United States, $\left\{ \begin{array}{l} \text{Application for discharge from im-} \\ \text{vs.} \\ \text{L. H.} \end{array} \right. \text{prisonment under R. S., Sec. 1042.}$

It appearing to me, J. N., a commissioner of the circuit court for the ——— district of ———, that L. H., the above-named defendant, has been imprisoned in the ——— county jail for the period of 30 days, solely for the nonpayment of a fine and costs adjudged against him by the district [*or*, circuit] court of the United States for the ——— district of ———, and that he is unable to pay the same, and has complied with all the requirements of law, it is therefore ordered that said L. H. be discharged from further imprisonment, and go hence without day.

J. N.,

[*Seal.*]

Commissioner of the Circuit Court
 of the United States for the ———
 District of ———.

Dated this ——— day of ———, 1894.

EXTRADITION.

No. 460.

Complaint for Warrant (1).

The United States of America,

— District of —, ss.

On this — day of —, personally appeared before me, J. N., a commissioner of the circuit court of the United States for the — district of —, and duly authorized by the said court to issue warrants for the extradition of fugitives from justice of foreign governments, A. B., of —, who makes solemn oath, and says that L. H. did, on the — day of —, at —, within the jurisdiction and government of —, commit the crime of murder [*or as the case may be*], in that he did, on the said — day of —, at the — aforesaid, [*here set forth facts sufficient to constitute an offense under the treaty*], against the peace and government of said —; that the said L. H. is now a fugitive from the justice of the said government of —, and that he did, on or about the — day of —, flee into and is now found within the limits of this judicial district.

A. B.

Subscribed and sworn to before me on the day and year first mentioned above, at my office, No. — — street, in the city of —, in the district aforesaid. J. N.,

[*Seal.*]

Commissioner of the Circuit Court
of the United States for the —
District of —.

(1) See Desty's Fed. Proc., Sec. 585, *et seq.*; R. S., Sec. 5270, *et seq.*

No. 461.

Extradition Warrant (1).

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal of the — District of —, Greeting:

Whereas complaint on oath and in writing has this day been made by A. B. before me, J. N., a commissioner of the circuit court of the United States for the — district of —, duly authorized by the said court to issue warrants for the extradition of fugitives from justice of foreign governments, wherein it is alleged that L. H. did on the — day of —, 1894, at —, within the jurisdiction and government of —, commit the crime of murder [*or as the case may be*], in that he did then and there [*set forth the words of the complaint with reference to the facts constituting the offense*], against the peace and government of the said government of —, and that the said L. H. is now a fugitive from justice of said —, and is now within the limits of this judicial district; and whereas it appears to me that a treaty or convention exists between the government of the United States and the government of — for the extradition of fugitives from justice, and that the crime of murder, with which the said L. H. is charged, is embraced in the terms of said treaty or terms of extradition.

These are therefore to command you forthwith to apprehend the said L. H., and to bring him before me, to be dealt with according to law and the provisions of said treaty of extradition.

Given under my hand and seal this — day of —, 1894, at my office, No. — — street, in the city of —, in the district aforesaid.

J. N.,

[Seal.]

Commissioner of the Circuit Court
of the United States for the —
District of —.

(1) See note to No. 460.

No. 462.**Final Commitment (1).**

The United States of America, In the matter of
 — District of —, ss. the extradition of L. H.

This cause coming on to be heard this — day of —, 1894, before me, J. N., a commissioner of the circuit court of the United States for the — district of —, on requisition presented by [*here state the name and official character, as F. L., Consul at the port of Cincinnati for the Republic of France*], that the said L. H. be committed for the purpose of being delivered up as a fugitive from justice pursuant to the provisions of a treaty dated the — day of —, and made between the government of the United States and that of France, and a hearing being had, and evidence produced, I find and adjudge that the evidence produced against the said L. H. is sufficient in law to justify his commitment on the charge of [*here set forth the crime charged*] had the crime been committed within the United States. I therefore order that the said L. H. be committed pursuant to the provisions of the treaty aforesaid, to abide the order of the President of the United States in the premises.

Given under my hand and seal at the city of —, this
 — day of —, 1894. J. N.,
 [Seal.] Commissioner of the Circuit Court
 of the United States for the —
 District of —.

(1) See note to No. 460.

No. 463.**Certificate of Extradition Proceedings (1).**

The United States of America, In the matter of the Ex-
 — District of —, ss. tradition of L. H.

I, J. N., a commissioner of the circuit court of the United States for the — district of —, being duly authorized by the said court to issue warrants for the extradition of fugitives from justice of foreign governments, do hereby certify

that a complaint was duly made on oath and in writing before me by A. B., charging L. H. with having committed the crime of murder [*or as the case may be*], within the jurisdiction and government of —, and that, being a fugitive from justice of said country, I thereupon issued my warrant for the arrest of the said L. H., directed to the marshal of the United States for the said district, and by virtue thereof the said L. H. was by the marshal arrested and brought before me for examination and hearing upon said charge, and that said examination and hearing was held on the — day of —, 1894, at my office at No. — street, in the city of —, and that R. X., Esq., was present as counsel for the [*foreign government*], and R. Y., Esq., was present as counsel for the prisoner, and that the evidence adduced before me I consider sufficient evidence to sustain the charge under the law and the provisions of the treaty of extradition between the government of the United States and the government of [*foreign power*], and that I have accordingly, by my warrant under my hand and official seal, this — day of —, 1894, committed him to the — county jail in the city of —, to await the order of the President of the United States in the premises.

I further certify that the following is a true copy of the testimony taken before me on said hearing and examination [*here set forth the testimony in full*].

Witness my hand and seal this — day of —, 1894.

J. N.,

[*Seal.*]

Commissioner of the Circuit Court
of the United States for the —
District of —.

(1) See note to No. 460.

No. 464.

**Proceedings where Offender is Arrested in one State for
Offense Committed in another State.—Before Indict-
ment (1).**

The defendant is taken before the nearest commissioner, and the charge read to him, and he can then demand a pre-

liminary hearing or waive examination and give bail for his appearance at the circuit or district court where the jury trial is to be held. In default of bail, he is finally committed by the United States commissioner or magistrate to jail, and then the United States attorney, provided with a certificate from the commissioner stating the above facts, and a copy of the final mittimus, applies to the circuit (or district) judge for a bench warrant of removal.

For form of Bench Warrant for Removal, see No. 466.

(1) See R. S., Sec. 1014.

No. 465.

Same—After Indictment (1).

Same proceeding as in No. 464, except that at the preliminary hearing before the magistrate or United States commissioner a certified copy of the indictment is sufficient evidence of the probable cause without other proof of the commission of the crime. The only fact for the United States commissioner to decide is the question of the identity of the prisoner with the person named in the indictment.

For form of Bench Warrant for Removal, see No 466.

(1) See R. S., Sec. 1014.

No. 466.

Bench Warrant for Removal (R. S., Sec. 1014).

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal of the United States for the — District of —, and to his Deputies, or any or either of them :

Whereas L. H. has been brought before me upon a commitment made by a United States commissioner in this district for the purpose of obtaining a warrant for the removal of the said L. H. to the — district of —, in which dis-

trict the offense for which said prisoner has been committed is to be tried, a copy of which commitment is hereto annexed.

And whereas, the United States district attorney for the — district of — has made application to me under the provisions of Section 1014 of the Revised Statutes of the United States for a warrant for the removal of said prisoner to the said — district of —, and an examination of the matter having been made by me, now, therefore, you are hereby commanded to remove said prisoner, now in your custody, forthwith to the said — district of —, and there deliver him to the United States marshal for the — district of —, or some other proper officer authorized to receive the said prisoner, in order that he may be dealt with according to law.

Given under my hand and seal of the district court of the United States for the — district of —, at the city of —, this day — day of —, 189—.

G. W.,

District Judge.

Attest:

B. R.,

Clerk.

No. 467.

Fee Bill (1).

The United States of America,

To —, U. S. Commissioner for the — District of —, Dr.

The United States
v.s.
 — —.

Complaint made by —. Complaint approved by —. Offense charged, viol. Sec. —, R. S. U. S. Offense committed at —, on the — day of —, 189—. Residence of accused, P. O. —. Disposition of case, —.

DATE.				Am't brought forward.
. . .	Drawing complaint, — folios, @ —c. per folio, —; oath, 10c.; jurat, 15c.; filing, 10c. . .	. . .	. . .	. . .
. . .	Issuing warrant for arrest, \$1; entering return, 15c.; filing, 10c. . . . .	. . .	. . .	. . .
. . .	Issuing subpoena for — U. S. witnesses, 25c.; ent. ret., 15c.; filing, 10c. . . . .	. . .	. . .	. . .
. . .	Issuing — temporary mittimus (warrant committing defendant for examination), \$1 each, —; ent. — return, 15c. each, —; filing, 10c. each . . . . .	. . .	. . .	. . .
. . .	Making — copy for jailer, — folios @ —c. per folio, —; certificate, 15c. . . . .	. . .	. . .	. . .
. . .	Drawing — temp. recog. of defendant to appear for examination, 3 fols., 45c.; filing, 10c. . . . .	. . .	. . .	. . .
. . .	Taking acknowl. to temporary recog. by defendant and — sureties, 25c. . . . .	. . .	. . .	. . .
. . .	Oaths to — sureties in justification, 10c. each . . . . .	. . .	. . .	. . .
. . .	Swearing — U. S. witnesses on examination, 10c. each. . . . .	. . .	. . .	. . .
. . .	Hearing and deciding on criminal charge, — day of —, 189— . . . . .	. . .	. . .	. . .
. . .	Hearing and deciding on criminal charge, — day of —, 189— . . . . .	. . .	. . .	. . .
. . .	Drawing final recognizance of defendant to court, — 3 fols., 45c. . . . .	. . .	. . .	. . .
. . .	Taking acknowl. of final recog. by defendant and — sureties, 25c. . . . .	. . .	. . .	. . .
. . .	Oaths to — sureties in justification, 10c. each. . . . .	. . .	. . .	. . .

. . .	Drawing recognizance of — witnesses to court, 3 folios, 45c. . . . .	. . .	. . .	. . .
. . .	Taking acknowl. to recog. by — witnesses and — sureties, 25c. . . . .	. . .	. . .	. . .
. . .	Issuing final mittimus (warrant committing deft. for trial), \$1; ent. return, 15c.; filing, 10c. . . . .	. . .	. . .	. . .
. . .	Making copy for jailer, — folios, @ —c. per folio, —; certificate, 15c. . . . .	. . .	. . .	. . .
. . .	Oaths to — U. S. witnesses as to attendance and travel, 10c. each. . . . .	. . .	. . .	. . .
. . .	Order (in duplicate) for marshal to pay U. S. witnesses, — fols., at 15c. per fol. . . . .	. . .	. . .	. . .
. . .	Discharging, — —, a poor convict, under Sec. 1943 R. S. . . . .	. . .	. . .	. . .
. . .	Copy of process forwarded to court, — folios, @ 10c. per folio. . . . .	. . .	. . .	. . .
. . .	Transcript of proceedings sent up on order of court, — folios, @ 15c. per folio. . . . .	. . .	. . .	. . .
. . .	Writing testimony of witnesses (depositions taken on examination), — fols., 20c. per fol. . . . .	. . .	. . .	. . .
	TOTAL, . . . . .	. . .	. . .	. . .
	AMOUNT CARRIED FORWARD, . . . . .	. . .	. . .	. . .

WITNESSES IN ABOVE CASE.		SURETIES OF DEFENDANTS IN ABOVE RECOGNIZANCES.	
NAME.	RESIDENCE.	NAME.	RESIDENCE.
.
.
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(1) The Treasury Department, per First Comptroller, requires United States Commissioners to use paper of half cap size, $8\frac{1}{2}$ x 14 inches, and only one side of page to be used. As to fees, see R. S., Secs. 847, 828, 1014, 1015; and U. S. *vs.* Jones, 134 U. S., 483; U. S. *vs.* Ewing, 140 U. S., 142; U. S. *vs.* Barber, *Id.* 164; U. S. *vs.* do., *Id.* 177; U. S. *vs.* Van Duzee, *Id.* 169; U. S. *vs.* McDermott, *Id.* 151.

INDICTMENTS.**No. 468.****Writ of Venire for Grand Jury.**

For form of Writ of Venire, see No. 56.

No. 469.**Oath or Affirmation of Foreman of Grand Jury.**

You do solemnly swear [*or affirm*] that, saving yourself and your fellow-jurors, you, as foreman of this grand inquest, shall diligently inquire, and true presentment make, of all such matters and things as shall be given you in charge, or otherwise come to your knowledge, touching the present service; the counsel of the United States, your own and your fellows, you shall keep secret, unless called on in a court of justice to make disclosures; that you shall present no person through malice, hatred, or ill-will, nor shall you leave any person unrepresented through fear, favor, or affection, or for any reward or hope thereof, but in all your presentments you shall present the truth, the whole truth, and nothing but the truth, according to the best of your skill and understanding, and this you do as you shall answer to God. [*If the foreman should affirm, then add here, "and this you do under the pains and penalties of perjury."*]

No. 470.**Oath or Affirmation of Grand Jurors.**

You, and each of you, do solemnly swear [*or affirm*] the same oath which H. B., your foreman, has now taken before you on his part; you and each of you shall well and truly observe, and keep on your respective parts, and this you do

as you shall answer to God. [*If an affirmation is taken in place of oath, then add here, "and this you do under the pains and penalties of perjury."*]

No. 471.

General Form of Indictment.

The United States of America,

No. —.

— District of —, ss.

In the Circuit Court of the United States within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and ninety—.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire in and for the said district, upon their oaths and affirmations, present that L. H. on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did, then and there, unlawfully, knowingly, and with force and arms [*here state the offense according to the case, and conclude*], contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

[*Additional charges may be added, if necessary, as follows :*]

Second Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court [*here set forth all the offenses, and conclude*], contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

A true bill.

United States Attorney.

H. B.,

Foreman.

INDICTMENTS IN SPECIAL CASES.**No. 472.****Misapplication of Funds by National Bank Officer (1).**

The United States of America,

— District of —, ss.

In the Circuit Court of the United States, within and for the
— District of —, in the — Judicial Circuit, of the
Term of —, in the year of our Lord —.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do present that L. H., on, to wit, the
— day of —, in the year of our Lord —, in the county
of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, he, the said L. H., being then and there president of a certain national banking association, then and there known as the — National Bank of —, in the state of —, which said association had been heretofore created and organized under and by virtue of the laws of the United States, and which said association was then and there acting and carrying on the banking business at —, in the said district, did then and there unlawfully, and willfully, and with intent to injure and defraud the said association, for the use, benefit, and advantage of himself, misapply certain of the moneys, funds, and credits of the said association, to wit: the sum of twenty thousand dollars (\$20,000.00), in the manner and by the means following, that is to say: That he, the said L. H., as such president as aforesaid, did then and there cause to be credited upon the books of said association to his, the said L. H.'s, individual account, the said sum of twenty thousand dollars (\$20,000.00), he, the said L. H., not being entitled to be then and there credited upon the said books with the said sum of money, or any part thereof, as he, the said L. H., then and

there well knew, and did thereby falsely and fraudulently represent to the directors, officers, clerks, and tellers of the said banking association that he, the said L. H., was entitled to draw and have paid out of the moneys and funds of the said association the sum of twenty thousand dollars (\$20,000.00), and did thereby place at the disposal and subject to the order of the said L. H. certain of the moneys and funds of the said association, to wit: the said sum of twenty thousand dollars (\$20,000.00), he, the said L. H., then and there unlawfully, wickedly, and fraudulently devising and intending that he should be enabled to draw and have paid out of the moneys and funds of the said association, and should appropriate and convert to his own use, without right and without being justly entitled thereto, the said sum of twenty thousand dollars (\$20,000.00), and thereupon the checks of the said L. H., drawn upon the said association for the said sum of twenty thousand dollars (\$20,000.00) being then and there presented to the said association for payment, were, by reason of the credit so made upon the books of the said association, as aforesaid, and by the authority of the said L. H., as expressed in the said credit, and in pursuance of the intent aforesaid of the said L. H., then and there drawn and paid out of the moneys and funds of the said association, although, as he, the said L. H., then and there well knew the said sum of twenty thousand dollars (\$20,000.00), so drawn out, paid, and appropriated, had not been deposited with the said association by him, or by any other person for his use, and was not then and there due and owing by and from the said association to the said L. H., and the repayment thereof to the said association was not then and there in any way secured, and the said L. H. had no manner of right to the same, he, the said L. H., then, there, and thereby intending to defraud and injure the said association, contrary to the form of statute in such case made and provided, and against the peace and dignity of the United States of America.

A true bill.

H. B., Foreman.

J. H.,
Attorney.

No. 473.

National Bank Officers Embezzling, etc., Funds (1).

The United States of America,

— District of —, ss.

In the Circuit Court of the United States, within and for the

— District of —, in the — Judicial Circuit, of the

Term of —, in the year of our Lord one thousand eight hundred and —.

First Count. The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H. on, to wit, the —, day of —, and at various times between that date and the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the State of —, in the circuit and district aforesaid, and within the jurisdiction of this court, the said L. H. being then and there a director and the vice-president of a certain national banking association, then and there known and designated as the — National Bank of —, in the state of —, which said association had been heretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of —, state of —, did then and there unlawfully and willfully misapply the moneys, funds, and credits of the said association without the knowledge and consent thereof, and with intent to convert the same to his own use, to wit: three million dollars (\$3,000,000) of the moneys, funds, and credits of the said association, in this, to wit: That the said L. H., as aforesaid, did pay, and cause to be paid to J. K. & Co., I. G. & Co., W. E. & Co., J. W. H., and other persons to the grand jurors unknown, the said sum of three million dollars (\$3,000,000) of the funds, moneys, and credits of the said association, to be used in certain hazardous and gambling transactions in the city of Chicago,

Illinois, to wit: To buy for the said L. H. large quantities, to wit: thirty million bushels of wheat in the city of Chicago, Illinois; he, the said L. H., not intending to pay the full price for said wheat, nor to receive the same in —, —, but to use the said three million dollars (\$3,000,000) in part payment of the price, in expectation of a contingent advance in the market value of said wheat for the benefit, use, and profit and gain of the said L. H., and certain other persons other than the said association to the grand jurors unknown, and with intent to injure and defraud the said association; the willful misapplication of the moneys, funds, and credits of the association by him, for the use and benefit and with the intent aforesaid by him, the said L. H. as aforesaid, being then and there contrary to the form of statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count. And the grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations present that L. H., on, to wit, the — day of —, and at various times between that date and the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, state of —, in the circuit of the district aforesaid, and within the jurisdiction of this court, the said L. H. being then and there a director and agent of a certain national banking association then and there known and designated as the — National Bank of —, in the state of —, and which said association had been therefore created and organized under the laws of the United States of America, and which said association was then and there acting and carrying on a banking business in the city of —, in said district aforesaid, and the said L. H., director and agent as aforesaid did, by virtue of such his employment, and whilst so employed as aforesaid, receive and take into his possession large sums of money and funds to and for the said — National Bank, to

wit: the sum of three million dollars, for and in the name and on the account of the said association, the — National Bank, and the said L. H., at the times aforesaid and the place aforesaid, did unlawfully embezzle and convert to his own use certain sums of said funds, moneys, and credits of the said — National Bank of —, to wit: the sum of two million dollars thereof, a more particular description of the funds, moneys, and credits so embezzled as aforesaid being to the jurors aforesaid unknown, with intent then, there, and thereby to injure and defraud the said — National Bank, contrary to the form and provisions of Section 5209 of the United States Revised Statutes in such case made and provided, and against the peace and dignity of the United States of America.

Third Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H. on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, being then and there a director and vice-president of the — National Bank of —, in the state of —, and which — National Bank was then and there a national banking association, duly organized under the laws of the United States, and then and there carrying on the business of banking, did, then and there, with intent to injure said association, and without the knowledge and consent thereof, unlawfully and willfully misapply of the moneys, funds, and credits of the said association the sum of two hundred thousand dollars (\$200,000.00), in this, to wit, that the said L. H., as aforesaid, caused himself to be credited on the books of said banking association to the credit of said L. H., and subject to his order and draft and withdrawal, the said sum of two hundred thousand dollars, with intent to convert the same to his own use, and the grand jurors, as aforesaid, further say that the said L. H., as aforesaid, did then and there make a certain writing, to wit, charge ticket, in the words and figures following, to wit:

The — National Bank, —, Feb. —, 1887.
 Credit L. H. . . . \$200,000.00.
 Amount deposited to credit
 — National Bank in
 L. H.

Charge First National Bank, New York, \$200,000.00.

And caused the same to be entered on the books of said — National Bank to the credit and subject to the order and disposal of the said L. H.; which said writing, to wit, charge ticket, did in substance and effect declare that L. H. had deposited to credit of the said — National Bank in the First National Bank of New York City, the sum of two hundred thousand dollars, whereas, in truth and fact, as he, the said L. H., then and there well knew, that the said sum of two hundred thousand dollars had not been by him deposited in said First National Bank of New York, to the credit of said — National Bank aforesaid, and the said L. H., fraudulently intending and devising to convert the same to his own use; and the grand jurors further say that the said L. H. did then and there willfully misapply the said sum of two hundred thousand dollars, moneys, funds, and credits, and convert the same to his own use, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Fourth Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, the said L. H. being then and there a director and vice-president of a certain national banking association, then and there known and designated as the — National Bank of —, in the state of —, which said association has been heretofore created and organized under the laws of the United States of America,

and then and there carrying on a banking business in the city of —, in the state of —, did then and there, knowingly and unlawfully issue and put forth, without the authority of the directors of said association, and with intent to convert the same to his own use, to the First National Bank of New York City, state of New York, a certificate of deposit in the following words and figures, to wit:

Certificate of Deposit.
This certificate is not subject to check, but must be presented to draw the money.

The — National Bank,
No. 500. —, April —, —.
First National Bank, N. Y., has deposited in this Bank
Two Hundred Thousand Dollars,
payable to the order of E. S., Cas. at First National Bank, N. Y., on return of this Certificate, in current funds with five per cent. interest on July —, —, fixed.
\$200,000.00. L. H.,
V. P.
Due July —, —.

And did cause the same to be forwarded to the said First National Bank of New York, he, the said L. H., as aforesaid, then and there well knowing that the said First National Bank had not deposited in the — National Bank of —, —, the sum of two hundred thousand dollars (\$200,000.00) as set forth in said certificate of deposit, and that no consideration had been received by the said association for the said certificate of deposit.

And the grand jurors further say that he, the said L. H., as aforesaid, did then and there procure a loan of two hundred thousand dollars from the First National Bank on the said certificate of deposit for the use, benefit, and gain of the said L. H., the issue of the said certificate of deposit, as aforesaid, without the authority of the directors of the said association, and without the knowledge and consent thereof, with intent to convert the proceeds thereof to his own use, and to injure said association, being then and there contrary to the form

of the statute in such case made and provided and against the peace and dignity of the United States of America.

Fifth Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of April, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, the said L. H. being then and there director and vice-president of the — National Bank of —, then and there a national banking association heretofore organized under the laws of the United States, and then and there carrying on a banking business in the city of —, state of —, and of the district aforesaid, and that he, the said L. H., director and vice-president as aforesaid, did then and there unlawfully and willfully, and with intent to injure the said association, the — National Bank of —, and without the knowledge and consent thereof, and with intent to convert the same to his own use, misapply the funds, moneys, and credits of said association in this, to wit: that the said L. H., as aforesaid, did then and there procure from the First National Bank of New York the loan of a large sum of money, two hundred thousand dollars (\$200,000.00), upon a certificate of deposit of the said — National Bank for the sum of two hundred thousand dollars, and certain collateral securities, to wit: bills receivable, choses in action, drafts, and promissory notes, discounted by the said — National Bank, unmatured and not then due, and taken by the said — National Bank in the regular course of its business, and then and there the property, assets, funds, and credits of the said association, of the total face value of one hundred and thirteen thousand dollars (\$113,000.00), and then and there of the total money value of one hundred and thirteen thousand dollars; the said bills receivable, drafts, promissory notes, choses in action, and certificates of deposit being too voluminous, lengthy, and numerous to be set forth in this indictment;

And the grand jurors aforesaid further say that the said L. H., as aforesaid, did then and there convert the said two hundred thousand dollars, so obtained as aforesaid, to his own use, in the purchase by him, the said L. H., for the use, benefit, and gain of the said L. H., a large quantity of wheat, to wit, ten million bushels of wheat; a more particular description thereof, and the persons through whom said purchases were made, being to the jurors aforesaid unknown.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say that the said L. H., director and vice-president as aforesaid, in the manner and form, and by the means and for the use and benefit, and with the intent, and without the knowledge and consent aforesaid, did then and there willfully misapply of the moneys, funds, and credits of the said association the said sum of two hundred thousand dollars aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Sixth Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of March, in the year of our Lord one thousand eight hundred and eighty-seven, in the county of —, in the State of —, in the circuit and district aforesaid, and within the jurisdiction of this court, the said L. H. being then and there director and vice-president of the — National Bank of —, then and there a national banking association, heretofore organized under the banking laws of the United States, and then and there carrying on a banking business in the city of —, state of —, and of the district aforesaid, and that he, the said L. H., director and vice-president as aforesaid, did then and there unlawfully and willfully, and with intent to injure the said association, the — National Bank of —, and without the knowledge and consent thereof, misapply the funds, moneys, and credits of said association, and did pay, and caused to be paid, to O. & C., of Chicago, state of Illinois, out of the moneys, funds,

and credits of said association, the sum of fifty thousand dollars, lawful money of the United States, in the purchase, by him, the said L. H., from the said O. & C., and other persons to said jurors unknown, for the use, benefit, and advantage of the said L. H., of a large quantity of wheat, to wit : One million bushels of wheat, a more particular description of said purchase, and the particulars thereof, and of the moneys, funds, and credits so paid, and of the persons and parties composing said copartnership of O. & C., as aforesaid, being to the said jurors unknown.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say that he, the said L. H., director and vice-president, as aforesaid, in the manner and form, and by the means, and for the use and benefit, and with the intent, and without the knowledge and consent aforesaid, did then and there willfully misapply of the moneys, funds, and credits of the said association the said sum of fifty thousand dollars aforesaid, and convert the same to his own use, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Seventh Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of April, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, the said L. H. being then and there a director and vice-president of the — National Bank of —, in the state of —, and which said — National Bank was then and there a national banking association, duly organized under the laws of the United States, and then and there carrying on the business of banking, did then and there unlawfully and willfully, and with intent to injure the said — National Bank, and without the knowledge and consent thereof, misapply of the moneys, funds, and credits of the said association the sum of sixty-

seven thousand and thirty-seven dollars and fifty cents (\$67,037.50), lawful money of the United States, in this, to wit: That the said L. H., as aforesaid, did pay, and cause to be paid, out of the moneys, funds, and credits of the said — National Bank, for the use, profit, and gain of the said L. H., a draft in the following words and figures, to wit:

\$67,037.50.

American Exchange

Nat'l Bank.

I. G. & Co.

No. 97. Chicago.

Chicago, April 29, 1887.

Pay to order of A. L. D., Cashier,

Sixty Thousand and Thirty-seven 50-100 Dollars.

The — Nat'l Bank,

—, —.

Value received, and charge the same to account of

I. G. & Co.

On the back of which said draft are indorsed the following words:

“ Pay — Nat'l Bank, —, —, or order,
for collection, account of American Exchange
Nat'l Bank of Chicago.

A. L. D., Cashier.”

He, the said L. H., well knowing that the said I. G. & Co. had no moneys, funds, or credits in said — National Bank to pay said draft, and that the said association had received no consideration for the same, and that the same was without its knowledge and consent; and he, the said L. H., then and there fraudulently intending and devising that the said I. G. & Co. should obtain possession of the said sixty-seven thousand and thirty-seven dollars and fifty cents (\$67,037.50) for the use, benefit, and gain of the said L. H.; and the grand jurors further say that the said sum of sixty-seven thousand and thirty-seven dollars and fifty cents (\$67,037.50), moneys, funds, and credits of the said — National Bank, a more accurate and particular description of said moneys, funds, and

credits being to the jurors aforesaid unknown, was then and there unlawfully misapplied and converted to the use of the said L. H., contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Eighth count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of June, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, the said L. H. being then and there a director and the vice-president of a national banking association organized under the banking laws of the United States, to wit, the — National Bank of —, in the state of —, and of the district aforesaid, and which said — National Bank as aforesaid was then and there carrying on the business of banking as aforesaid, did, without the knowledge and consent of said bank, knowingly make and cause to be made by one C. T. A., then and there a clerk in said bank, in a book then and there belonging to and in use by the said association in the transaction of its banking business, and designated and known as "Individual No. 2, A. to J.," a certain entry to the credit of I. G. & Co., of Chicago, in the state of Illinois, in the words and figures following, to wit:

I. G. & Co.

Cr.	Bal.
18—. June —, \$285,000.	\$285,000.

And which said entry, so as aforesaid made in said book, did, in substance and effect, declare that the said association had in its possession the sum of two hundred and eighty-five thousand dollars (\$285,000) belonging to said I. G. & Co., subject to the order of said I. G. & Co.; and the grand jurors aforesaid further say that the said entry so made as aforesaid was false in this, to wit, that the said association did not

have in its possession the sum of two hundred and eighty-five thousand dollars (\$285,000), nor any part thereof, as he, the said L. H. as aforesaid, then and there well knew, and that the said entry so made was false in this, to wit, that the said association had not received from any person or persons the said sum of two hundred and eighty-five thousand dollars (\$285,000) for, to, and on account of said I. G. & Co., nor had the said association loaned to the said I. G. & Co. the said sum of two hundred and eighty-five thousand dollars (\$285,000), as he, the said L. H., then and there well knew; he, the said L. H., intending then, there, and thereby to defraud the said association, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Ninth Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of June, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, the said L. H. being then and there a director and agent of the — National Bank of —, then and there a national banking association heretofore organized under the banking laws of the United States, and then and there carrying on a banking business in the city of —, state of —, and of the district aforesaid; and he, the said L. H., as aforesaid, did then and there unlawfully and fraudulently abstract and convert to his own use property, credits, and funds of the said — National Bank of the value of one million dollars, which had come into his possession, and which were entrusted to him, the said L. H., as such director and vice-president of the said association; and the grand jurors aforesaid further say that the said L. H., as aforesaid, did then and there abstract, and surreptitiously obtain, without the knowledge and authority of the directors of the said association, and without the knowledge and consent of said association, and with intent to convert

the same to his own use, a large number of bills receivable, drafts, choses in action, and promissory notes unmatured and not then due and payable, and other collateral securities then and there the assets, funds, credits, and property of said association, and heretofore discounted and taken in the regular course of its business by the said — National Bank, as aforesaid, of the total face value of one million dollars, and of the total money value of one million dollars, the said bills receivable, choses in action, drafts, promissory notes, and a more accurate description of the same being too numerous, voluminous, and lengthy to be set out in this indictment (and a more particular description of the same being to the said jurors aforesaid unknown), the unlawful and fraudulent abstraction of the said funds, assets, and property of the said — National Bank by him, the said L. H., as aforesaid, with intent to convert the same to his own use, and to defraud said association, being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

U. S. Attorney.

(1) See R. S., Sec. 5209. Taken from the record in *U. S. vs. E. L. Harper*, and sustained in the Circuit Court of the United States for the Southern District of Ohio. See *U. S. vs. Harper*, 33 Fed. Rep., 471.

No. 474.

Using Mails Concerning Scheme to Defraud (R. S., Sec. 5480).

The United States of America,

No. —.

— District of —, ss.

- In the Circuit Court of the United States within and for the
— District of —, in the — Judicial Circuit, of the
Term of —, in the year of our Lord 18—.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the

— district of —, upon their oaths and affirmations present that L. H. (doing business under the name and style of L. H. & Co.), on, to wit, the — day of —, 18—, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully, knowingly, and fraudulently devise a scheme and artifice to defraud various persons, whose names are to the grand jurors aforesaid unknown; said scheme and artifice to be effected by inciting the said various persons, whose names are to the grand jurors aforesaid unknown, to open communication with him, the said L. H. (doing business under the name and style of L. H. & Co.), by means of the post-office establishments of the United States, and which said misuse of the post-office establishments of the United States was then and there a part of said scheme to defraud, by falsely pretending in and through certain advertisements, letters, and circulars, which said advertisements, letters, and circulars are too lengthy, voluminous, and otherwise unfit to be set forth in this instrument, to be desirous of employing persons to advertise electric belts, and tack up advertisements and show-cards of electric goods in town and country, and if the said persons would introduce two of said electric belts, and secure written testimonials from not less than two persons who had been cured or benefited by the belts, that then he, the said L. H. (doing business under the name and style of L. H. & Co.), would enter into an agreement to pay the said persons so introducing belts and securing written testimonials as aforesaid, a monthly salary of \$— (payable semi-monthly), and all necessary expenses to advertise said belts, and also to be desirous of making two trial belts absolutely free to all honest applicants for said employment, and if the said persons would pay \$— for said two trial belts as a guarantee, that then he, the said L. H., would refund the same after they, the said persons, had commenced work permanently by the month as aforesaid;

When, in truth and in fact, he, the said L. H. (doing business as aforesaid), was not desirous of employing persons to

advertise electric belts, and tack up advertisements and show-cards of electric goods in town and country upon the terms as set forth in said advertisements, letters, and circulars as aforesaid, and never intended to enter into an agreement to pay the said persons so introducing two of said electric belts, and securing written testimonials as aforesaid, a monthly salary of \$—— (payable semi-monthly), and all necessary expenses to advertise said belts; and when, in truth and in fact, he, the said L. H. (doing business as aforesaid), never intended to make two trial belts absolutely free to all honest applicants for said employment, and never intended to refund the said \$—— if they, the said persons, applicants as aforesaid, would pay the same for said two trial belts as a guarantee, after they, the said persons, had commenced work permanently by the month as aforesaid, and never intended to employ said persons, or any of them, applicants as aforesaid, permanently by the month;

But was deceiving each of the said various persons (whose names are to the grand jurors aforesaid unknown) by inducing them, the said various persons (whose names are to the grand jurors aforesaid unknown), to pay him, the said L. H. (doing business as aforesaid), a sum of money, to wit, \$——.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said L. H. (doing business as aforesaid) did wrongfully and unlawfully, then and there, and in execution of said artifice and scheme, and misusing the post-office establishment of the United States, receive and take from the post-office in ——, various letters addressed to L. H. & Co., ——, —— (a more particular description of said letters being to the grand jurors aforesaid unknown), as mailed by said various persons (whose names are to the grand jurors aforesaid unknown) at various post-offices of the United States, the names of the said post-offices being to the grand jurors aforesaid unknown, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H. (doing business under the name and style of L. H. & Co.), on, to wit, the — day of —, in the year of our Lord, 18—, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there, unlawfully, knowingly, and fraudulently, devise a scheme and artifice to defraud one W. C., and other persons (whose names are to the grand jurors aforesaid unknown), said scheme and artifice to be effected by opening correspondence with him, the said W. C., and other persons (whose names are to the grand jurors unknown), by means of the post-office establishment of the United States, and which said scheme and artifice to defraud in the advertisement, letter, or circular, in the words and figures following, to wit: [*here set forth the advertisement, circular, or letter in full*].

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said scheme and artifice, as set forth in said advertisement, letter, or circular, issued by said L. H. (doing business as aforesaid), was false and fraudulent, among other things, in this, to wit: that he, the said L. H. (doing business as aforesaid), was not desirous of employing persons to advertise electric belts, and tack up advertisements and show-cards of electric goods in town and country upon the terms as set forth in said advertisement, letter, or circular, as aforesaid, and never intended to enter into an agreement to pay the said person so introducing two electric belts, and securing written testimonials as aforesaid, a monthly salary of \$—— (payable semi-monthly), and all necessary expenses to advertise said belts; and, also, in this, to wit: that he, the said L. H. (doing business as aforesaid), was not desirous of making two trial belts absolutely free to all honest applicants for said employment, and never intended to refund the said \$——, as stated in said advertisement, letter, or circular, as aforesaid, if they, the

said persons, applicants as aforesaid, would pay the same for said two trial belts as a guarantee after they, the said persons, had commenced work permanently by the month, as aforesaid, and never intended to employ said persons, applicants, as aforesaid, permanently by the month, as therein stated, but was so falsely pretending to, deceiving, and defrauding the said W. C., and other persons (whose names are to the grand jurors aforesaid unknown), by inducing him, the said W. C., and other persons (whose names are to the grand jurors aforesaid unknown), to pay him, the said L. H. (doing business as aforesaid), a sum of money, to wit, \$——.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said L. H. (doing business as aforesaid) did then and there, unlawfully and knowingly, and in execution of said scheme and artifice, and misusing the post-office establishment of the United States, place in a post-office of the United States, to wit, in the postoffice at ——, ——, in the circuit and district aforesaid, and within the jurisdiction of this court, a certain letter, to wit, a letter addressed to W. C., ——, ——, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

United States Attorney.

A true bill.

H. B., Foreman.

Taken from the record in U. S. *vs.* John C. Emory, and sustained in the Circuit Court of the United States for the Southern District of Ohio.

Scheme to Defraud—Misuse of Mails (Insurance Co.) (I).

In the District Court of the United States, within and for
the — District of —, in the — Judicial Circuit, of
the Term of —, in the year of our Lord one thousand
eight hundred and —.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the ——— district, upon their oaths and affirmations, present that L. H., on, to wit, the ——— day of ———, in the year of our Lord one thousand eight hundred and ———, in the county of ——— and state of ———, in the circuit and district aforesaid, and within the jurisdiction of this court, having theretofore devised a scheme and artifice to defraud the C. O. Co., N. B., S. A. S., and certain other persons, whose names are to these grand jurors unknown, of large sums of money, to wit, \$——, to be effected by intending to open, and by opening, correspondence and communication with the said persons and corporation last above-named, and certain unknown persons, by means of the post-office establishment of the United States, which said use and misuse of the post-office establishment of the United States was a part of the said scheme to defraud, and which said scheme and artifice to defraud was and is in substance and effect as follows, to wit: to form, organize, and carry on certain pretended fire and marine insurance companies under the names, to wit, The C. Fire Insurance Co., of ———, The E. Fire Insurance Co., of ———, The W. Fire and Marine Insurance Co., of ———, The H. Insurance Co., of ———, and the U. S. Fire Insurance Co., of ———; and pretending that said insurance companies were owned and conducted and managed by men of good standing in the community, and possessed of property, assets, and funds to meet losses and damages by fire, which

might arise to persons assured, and to whom policies of insurance had been and would be issued, when, in truth and in fact, the said pretended fire insurance companies, as above named and set forth, were fictitious and fraudulent, and were, in fact, carried on by the said L. H., and other persons whose names are to these grand jurors unknown, as schemes and artifices to defraud the persons and parties insured out of the money paid as premiums, and never intending to pay any loss or damage by fire to the persons insured, and to whom the said so-called policies of insurance were issued.

And the grand jurors aforesaid further say that the said defendants above named, and other persons to these grand jurors unknown, in the names of the above-mentioned insurance companies of —, and upon the payment by the said C. O. Co., N. B., and S. A. S., of \$—, issued to the last-named parties and corporation and persons certain so-called policies of insurance against damage or loss by fire; and which said pretended insurance companies were then and there fictitious and fraudulent in this, to wit, that no such companies as the C. Fire Insurance Co., of —, The E. Fire Insurance Co., of —, the W. Fire and Marine Insurance Co., of —, The H. Fire Insurance Co., of —, and the U. S. Fire Insurance Co., of —, all of —, then existed or have a place of business in said places in —, nor is there any office of such companies, nor persons carrying on the business for and in behalf of such companies, nor do such companies own property, funds, or assets in —, or elsewhere, as they, the said above-named defendants, then and there well knew.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., in executing said scheme and artifice to defraud, and in attempting so to do, did, on the — day of —, 1894, then and there receive from the post-office at —, —, a large number, to wit, five registered letters, directed as follows:

No. —, The C. Fire Insurance Company, —, —.

No. —, The E. Fire Insurance Company, —, —.

No. —, The W. Fire and Marine Insurance Company,
—, —.

No. —, The H. Fire Insurance Company, —, —.

No. —, The U. S. Fire Insurance Company, —,
—.

He, the said L. H., intending then and there to defraud the said C. O. Co., N. B., and S. A. S., contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, having theretofore devised a scheme and artifice to defraud one N. B., and certain persons whose names are to these grand jurors unknown, of large sums of money, to wit, \$—, to be effected by intending to open, and by opening a correspondence and communication with the said N. B., and unknown persons, by means of the post-office establishment of the United States, which said use and misuse of the post-office establishment of the United States was a part of the said scheme to defraud, and which said scheme and artifice to defraud was and is in substance and effect as follows, to wit: By making and causing to be made false and fraudulent representations to induce the said N. B., and certain other persons whose names are to these grand jurors unknown, to insure their buildings, machinery, and other property in the following-named company, the W. Fire and Marine Insurance Company, of —, —, and representing said company to be carrying on a legitimate business as insurers against loss or damage by fire, and representing that said company was then and there owned, and conducted, and managed by men of good standing in the

community, and that said company was solvent, and possessed of capital and means to pay the losses and damage by fire which might arise and occur to the persons insured, and to whom policies of insurance would be issued upon the payment of certain premiums; when, in truth and in fact, said pretended insurance company, to wit, the W. Fire and Marine Insurance Company, of —, —, was fictitious and fraudulent, and was carried on by the said L. H., and the persons whose names are to these grand jurors unknown, as a scheme and artifice to defraud the persons assured, and to whom policies of insurance were issued out of the money paid as premiums, and never intending to pay any loss or damage by fire to the persons assured, and to whom policies were issued, and said policies and said company were schemes and artifices to defraud;

And the grand jurors aforesaid further say that the said L. H., and other persons whose names are to these grand jurors unknown, in the name of the W. Fire and Marine Insurance Company, of —, —, and upon the payment by the said N. B. of \$—— to the said L. H., and other persons as aforesaid, issued to the said N. B. a so-called policy of insurance, undertaking to insure the said N. B. against damage or loss by fire upon the building and goods of the said N. B., between the — day of —, 18—, and the — day of —, 18—, as set forth in the said policy, for the full sum of \$——, and which said policy of insurance is too voluminous to be set forth in this instrument, and which said insurance company was then and there fictitious and fraudulent in this, to wit, that no such company existed, nor has a place of business in —, —, nor elsewhere, nor is there any office of such company or persons carrying on the business for and on behalf of such company, nor does such company own funds or assets in —, —, nor elsewhere, as he, the said L. H. and the said other persons then and there well knew; and although the said N. B. suffered loss and damage by fire, the said company never paid, and never intended to pay or compensate, him for such loss;

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., in executing said scheme and artifice to defraud, and in attempting so to do, did then and there receive from the post-office at —, —, one registered letter, No. —, directed as follows, to L. H., President of W. Fire and Marine Insurance Company, —, —, No. — — street, —, and registered — day of —, 18—, —, —, he, the said L. H., and the said other persons whose names are to these grand jurors unknown, intending then and there and thereby to defraud the said N. B., and the misuse of the post-office establishment of the United States, by him, the said L. H., and the said other persons whose names are to the grand jurors unknown, as aforesaid, being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

A true bill.

J. H.,

H. B.,

United States Attorney.

Foreman.

(1) Taken from the record in U. S. *vs.* John R. Elderkin, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 476.

Mailing Lottery Circulars (R. S., Sec. 3894, as amended September 19, 1890).

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and —:

First Count. The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirma-

tions, present, that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did knowingly cause to be delivered by mail certain circulars forbidden to be delivered by mail, to wit: a certain circular and publication of and concerning a lottery offering prizes, which said circular and publication contained an advertisement and list of prizes awarded at a drawing of said lottery, which circular and publication was numbered —, and purported to be issued from the banking-house of L. H., at No. — — street, was dated —, — day of —, 1894, and was inclosed in an envelope directed to J. B., No. — — street, —, —, in said district, and was carried by mail for delivery to said J. B., No. — — street, —, —; did then and there unlawfully and knowingly cause said circular and publication concerning said lottery, which circular and publication is too voluminous to be spread upon the records of this honorable court, to be delivered by mail, according to said direction, to said J. B., No. — — street, —, —, the knowingly causing said circular and publication to be delivered by mail, as aforesaid, being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there, unlawfully and knowingly, cause to be delivered a large number, to wit, [fifteen, *or as may be*] of circulars and publications concerning a lottery offering prizes to persons whose names and post-office addresses are to these grand jurors unknown, each of which circulars and publications was in-

closed in an envelope and directed to a person whose name and post-office address is to these grand jurors unknown, in said district, said large number of circulars and publications, inclosed in envelopes and directed as aforesaid, having been theretofore on the — day of —, 18—, unlawfully and knowingly deposited and caused to be deposited in a post-office of the United States, to wit, the post-office at —, in the state of —, for delivery by mail to said persons whose names and post-office addresses are to these grand jurors unknown, in said district, according to the directions on said envelopes, as aforesaid, and which circulars and publications were then and there carried by mail and delivered to said unknown persons in said district; the causing to be deposited by the said L. H. of said circulars and publications, to said persons, by mail as aforesaid, being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

United States Attorney.

A true bill.

H. B., Foreman.

Taken from the record in U. S. *vs.* E. H. Horner, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 477.

Mailing Libelous Postal Cards (Act of Sept. 26, 1888.)

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and —:

First Count. The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire

within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly deposit and cause to be deposited in a post-office of the United States, to wit, the post-office at —, in the state of —, for mailing and delivery, a certain postal card, otherwise mailable by law, directed to A. H., —, —, and postmarked —, —, — day of —, 3:30 p. m., 1894, upon which postal card were then and there written epithets, terms, and language of a libelous, defamatory, and threatening character, which epithets, terms, and language were then and there calculated, by the terms and manner and style of display, and obviously intended to reflect injuriously upon the character and conduct of one A. H., and which epithets, terms, and language were and are of the following tenor and effect, that is to say: [*set forth terms and language used in full*], which epithets, terms, and language he, the said L. H., then and there well knew were of a threatening character and were calculated, as aforesaid, to reflect injuriously upon the character and conduct of said A. H., and that the same were obviously intended to so reflect, and were by him, the said L. H., then and there, intended to so reflect upon the character and conduct of the said A. H., contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

United States Attorney.

A true bill.

H. B., Foreman.

Taken from the record in the U. S. *vs.* Harry B. Clutes, and sustained by the District Court of the United States for the Southern District of Ohio.

No. 478.

Taking Obscene Pamphlet from the Mail (1) (R. S., Sec. 3893)

The United States of America,

No.—.

—District of —, ss.

In the District Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and —.

First Count. The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly cause to be taken from the mails of the United States, for the purpose of circulating and disposing of the same, a certain obscene, lewd, and lascivious pamphlet, entitled [*set forth the title*], and which said obscene, lewd, and lascivious pamphlet, entitled as aforesaid, was inclosed in a wrapper and directed to A. M., and had been conveyed in the mails of the United States, and which said obscene, lewd, and lascivious pamphlet contains language too lewd, obscene, and lascivious to be set forth in the records of this honorable court; he, the said L. H., then and there well knowing the said pamphlet to be obscene, lewd, and lascivious, and knowingly causing the same to be taken from the mails of the United States, for the purpose aforesaid, by him, the said L. H., being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

A true bill.

United States Attorney.

H. B., Foreman.

(1) Taken from the record in U. S. *vs.* Miller, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 479.**Mailing Obscene Letter (1) (R. S., Sec. 3893, as amended September 26, 1888).**

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States, within and for the
 — District of —, in the — Judicial Circuit, of the
 Term of —, in the year of our Lord one thousand
 eight hundred and —.

First Count. The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and knowingly deposit and caused to be deposited in a post-office of the United States, to wit, the post-office at —, —, for mailing and delivery, certain non-mailable matter, to wit, a letter inclosed in an envelope, and which said letter was obscene, lewd, and lascivious, and is unfit to be set forth in this instrument, and to be spread upon the records of this honorable court, and which said envelope, containing the letter as aforesaid, was then and there directed to G. H., —, —, he, the said L. H., knowing the said letter to be obscene, lewd, and lascivious, and the mailing by him as aforesaid being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

A true bill.

J. H.,

H. B., Foreman.

United States Attorney.

(1) Taken from the record in the U. S. *vs.* Charles A. Love, and sustained in the District Court of the United States for the Southern District of Ohio,

No. 480.**Indictment for Robbing Post-Office (1) (R. S., Secs. 5478 and 5475).**

The United States of America,

No. —.

— District of —, ss.

In the Circuit Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and —.

First Count. (R. S., Sec. 5478.) The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully, willfully, and forcibly break into a certain building used in part as a post-office of the United States, to wit, a building in —, in said — county, so used as aforesaid, with intent to commit larceny therein, that part of the building used as a post-office as aforesaid, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count. (R. S., Sec. 5475.) And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and willfully steal and purloin certain property belonging to the post-office department of the United States, to wit, eight hundred postage stamps of the denomination of — cents, two hundred postage stamps of the denomination of — cents, three hundred

postage stamps of the denomination of — cents, which said property was of the value of more than twenty-five dollars, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Third Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and willfully appropriate to his own use for lucre and gain, certain property belonging to the post-office department of the United States, to wit, eight hundred postage stamps of the denomination of — cents, two hundred postage stamps of the denomination of — cents, three hundred postage stamps of the denomination of — cents, eight hundred stamped envelopes of the denomination of — cents, which said property was of the value of more than twenty-five dollars, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. J. H.,

A true bill.

United States Attorney.

H. B., Foreman.

(1) Taken from the record in the U. S. *vs.* Jesse Peterson, and sustained in the Circuit Court of the United States for the Southern District of Ohio.

No. 481.**Violation of Postal Laws (1) (R. S., Secs. 3892 and 6469).**

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —; in the year of our Lord one thousand eight hundred and —.

First Count. The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully take a letter which had been in the post-office of the United States, to wit, the post-office at —, —, and in the custody of a letter-carrier of said post-office, before it had been delivered to the person to whom it was then and there directed, and which said letter was then and there directed to E. H., — street, —, —, and the said L. H. did then and there unlawfully secrete and destroy the same, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, and within the circuit and district aforesaid, and within the jurisdiction of this court, did then and there knowingly obtain by deception, from a person having the custody thereof, to wit, one C. M., a letter containing an article of value, which said letter had been in the post-office of the United States, to wit, the post-office at —, — for

delivery to one E. H., and which said letter then and there contained pecuniary obligations of the government of the United States of the denomination and value of — dollars, and which said letter was then and there directed to E. H., — street, —, —, and he, the said L. H., did then and there unlawfully and feloniously embezzle the said letter and convert the same to his own use before its delivery to the person to whom it was directed, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,
United States Attorney.

A true bill.

H. B., Foreman.

Taken from the record in U. S. *vs.* Lewis Montgomery, *alias* James Montgomery, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 482.

Embezzlement of Letters (1) (R. S., Sec. 5467).

The United States of America,
— District of —, ss.

No. —.

In the District Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and —.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the — district of —, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, being then and there a person employed in the postal service

of the United States, to wit, as a letter-carrier of the post-office at —, —, and a certain letter having come into his possession as such letter-carrier, and which was intended to be delivered from said post-office, and which said letter had been in the mails of the United States, did, then and there, unlawfully and feloniously, embezzle and convert to his own use said letter, and which said letter then and there contained three pecuniary obligations of the United States, each one of the denomination and value of one dollar, and of the total value of three dollars, which said letter was then and there inclosed in an envelope and directed to M. C., No. — street, care of E. F., —, —. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said L. H., letter-carrier as aforesaid did then and there, unlawfully and feloniously, embezzle and convert to his own use said letter and its contents, with intent to defraud, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, being then and there a person employed in the postal service of the United States, to wit, as a letter-carrier of the post-office at —, —, and a certain letter having come into his possession as such letter-carrier, and which was intended to be conveyed by mail, and which said letter was inclosed in an envelope and directed to M. C., No. — — street, care of E. F., —, —, and which said letter then and there contained obligations of the United States of the value of \$—; and he, the said L. H., as aforesaid, did then and there, unlawfully and feloniously, steal and take out of said letter, which had come into his possession as aforesaid, and which was in-

tended to be delivered by the post-office, the said sum of three dollars, pecuniary obligations of the United States, as aforesaid, the said money not being owned by the said L. H. before the delivery of said letter to the person to whom it was directed, and with intent then and there to defraud, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

United States Attorney.

A true bill.

H. B., Foreman.

(1) Taken from the record in U. S. *vs.* Orin E. Sparks, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 483.

Embezzling Money Order and Postal Funds (1) (R. S., Secs. 4046 and 4053).

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and —.

First Count. The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, being then and there the postmaster at —, county of —, state of —, and then and there connected with the business and operation of the money-order office at —, county of —, state of —, as aforesaid, did then

and there, unlawfully and knowingly, convert to his own use and embezzle a certain portion of the money-order funds of the United States, to wit, the sum of — dollars, which said money-order funds came into his possession as such postmaster and person connected with the business and operations of the money-order office as aforesaid, and the embezzlement and conversion to his own use of said funds as aforesaid, being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, being then and there the postmaster at —, county of —, state of —, and as such postmaster having the temporary custody of money, which, by law, is a part of the postal revenue of the United States, did then and there unlawfully convert to his own use, and did then and there knowingly and willfully neglect to deposit the same, to wit, the sum of — dollars, postal revenue of the United States as aforesaid, in the treasury of the United States, or in some lawfully authorized depository of such revenues of the United States, the unlawful conversion to his own use, as aforesaid, by him, the said L. H., and his knowingly and willfully neglecting to deposit said postal revenues as aforesaid, being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

A true bill.

United States Attorney.

H. B., Foreman.

(1) Taken from the record in the U. S. *vs.* Aaron G. Albaugh, and sustained in the District Court of the United States for the Southern District of Ohio.

484.

Stealing Personal Property of the United States (1)
(R. S., Sec. 5456).

The United States of America, No. —.
 — District of —, ss.

In the District Court of the United States, within and for the
 — District of —, in the — Judicial Circuit, of the
 Term of —, in the year of our Lord one thousand
 eight hundred and —.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did, then and there, unlawfully and feloniously, take and carry away from another, to wit, from R. K., then and there the postmaster at —, — county, in the state of —, personal property belonging to the United States, of the value of eleven dollars, and which said personal property then and there consisted of an obligation of the United States, to wit, an United States treasury certificate of the value of ten silver dollars and one dollar in silver coin, issued and coined by the mints of the United States, of the value of one dollar, and which said personal property, as aforesaid, was then and there a part of the postal revenues and money-order funds of the post-office department of the United States, the felonious taking and carrying away of the same by him, the said L. H., with intent then, there, and thereby to defraud, being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. J. H.,

A true bill, United States Attorney.
 H. B., Foreman.

(1) Taken from the record of the U. S. *vs.* William J. Burns, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 485.**Falsely Personating Another in Violation of R. S.,
Sec. 5435 (1).**

The United States of America,
—— District of ——, ss.

No. ——.

In the District Court of the United States, within and for the —— District of ——, in the Judicial Circuit, of the Term of ——, in the year of our Lord one thousand eight hundred and ——.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, in the county of ——, in the state of ——, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully, knowingly, and falsely personate and represent a person entitled to certain wages from the United States, and under color of such false personation receive the money of a person really entitled to receive said wages, in this, to wit, that he, the said L. H., at the time and place aforesaid, did then and there knowingly, unlawfully, and falsely personate and represent himself to be one W. B., late private Company M, —— United States Cavalry; he, the said W. B., as aforesaid, being then and there the person really entitled to receive said wages from the United States, to wit, the sum of —— dollars, as extra duty pay for services as nurse in a hospital; and he, the said L. H., did then and there, under color of such false personation, to wit, as being W. B., receive the said sum of —— dollars, wages as aforesaid due to the said W. B. as aforesaid; he, the said L. H., having no right, authority, or power to personate and represent the said W. B., and to receive the said wages as aforesaid, as he, the said L. H., then and there well knew, and intending then, there, and thereby to defraud the said W. B.,

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H. on, to wit, the — day of —, 18—, in the county of —, in the state of —, and the district aforesaid, did then and there unlawfully, knowingly, and falsely personate and represent a person entitled to certain wages from the United States, and, under color of such false personation, endeavor to receive the money of a person really entitled to receive the said wages in this, to wit, that he, the said L. H., did then and there sign a certain receipt and voucher with the name of W. B., late private Company M, — United States Cavalry, which said voucher and receipt is in the words and figures following, to wit: [*set forth in full the voucher*], he, the said W. B., being then and there the person really entitled to said wages from the United States, to wit, the sum of — dollars, as extra-duty pay as such private in Company M, — Regiment United States Cavalry; and he, the said L. H., did then and there, under color of such false personation, to wit, as W. B., endeavor to receive and obtain the said sum of — dollars, wages and extra-duty pay, as aforesaid, to the said W. B., he, the said L. H., having no right, authority, or power to personate and represent the said W. B. as aforesaid, or to receive the said wages as aforesaid, as he, the said L. H., then and there well knew; he, the said L. H., intending then, there, and thereby to defraud the said W. B., contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

A true bill.

United States Attorney.

H. B., Foreman.

(1) Taken from the record in the U. S. *vs.* Adrian I. Jones, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 486.**Falsely Personating an Officer of the United States (1)
(Act of April 18, 1884).**

The United States of America,

No. —.

— District of —.

In the District Court of the United States, within and for the
— District of —, in the — Judicial Circuit, of the
Term of —, in the year of our Lord one thousand
eight hundred and —.

First Count. The Grand Jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully and feloniously, and with intent to defraud one T. M., falsely assume and pretend to be an employee acting under the authority of an officer of the government of the United States, to wit, a civil surgeon and medical examiner duly appointed by the commissioner of pensions to make the periodical examinations of pensioners which are or may be required by law, and to examine applicants for pensions in regard to their disabilities, and the said L. H. did then and there in such pretended character, as aforesaid, take upon himself to act as such medical examiner and civil surgeon, and did then and there examine the said T. M. upon his bodily ailments and diseases; he, the said T. M., being an applicant for a pension under the laws of the United States.

And the grand jurors aforesaid do further present that he, the said L. H., was not then and there an employee acting under the authority of an officer of the government, to wit, medical examiner and civil surgeon appointed by the commissioner of pensions, as he, the said L. H., then and there well knew, and he, the said L. H., intending then, there, and thereby to defraud the said T. M., contrary to the form of the

statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count. And the grand jurors aforesaid, on their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully, and feloniously, and with intent to defraud one T. M., pretend and falsely assume to be an employee acting under the authority of an officer of the government of the United States, to wit, a civil surgeon and medical examiner, duly appointed by the commissioner of pensions to make the periodical examinations of pensioners which are or may be required by law, and also to examine applicants for pensions in regard to their disabilities, and the said L. H. did then and there in such pretended character as aforesaid receive from the said T. M. certain valuable things, to wit, meals, food and lodging; he, the said T. M., being then and there an applicant for a pension under the laws of the United States, and then and there believing the said L. H. to be the medical examiner and employee acting under the authority of the commissioner of pensions.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that he, the said L. H., was not then and there an employee acting under the authority of an officer of the government, to wit, medical examiner and civil surgeon appointed by the commissioner of pensions, as he, the said L. H., then and there well knew, and he, the said L. H., then, there, and thereby intending to defraud the said T. M., contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

A true bill.

United States Attorney.

H. B., Foreman.

(1) Taken from the record in U. S. *vs.* George L. Fairbanks, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 487.**Making and Presenting False Claim for Pension, etc. (1)**
(R. S., Sec. 5438.)

The United States of America,

— District of —, ss.

In the District Court of the United States, within and for the
— District of —, in the — Judicial Circuit, of the
Term of —, in the year of our Lord one thousand
eight hundred and —.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the — district of —, upon their oaths and affirmations, present that L. H., alias A. C., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully make and cause to be made a certain claim upon the government of the United States, to wit, a claim to be placed on the pension rolls of the United States under the provisions of an act of congress approved June 27, 1890, as being the identical A. C., who was enrolled on the — day of —, 18—, in Company A, — Regiment, Massachusetts Colored Troops, as a private in the service of the United States in the war of the rebellion, and who served at least ninety days, and was honorably discharged therefrom, and who was partially unable to earn a support by manual labor by reason of two wounds by shells, and other disabilities, and knowing such claim to be false, fraudulent, and fictitious, and which said false, fraudulent, and fictitious claim is in the words and figures following, to wit: [*set out the claim in full*], the said claim being false, fraudulent, and fictitious in this, to wit, that the said L. H. was not the identical A. C. who was enrolled on the — day of —, 18—, in Company A, — Regiment, Massachusetts United States Colored Troops as a private in the service of the United States in the war of the rebellion, as set

forth in said declaration for invalid pension, as he, the said L. H., then and there well knew, and he, the said L. H., intending then, there, and thereby to defraud the United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., alias A. C., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, having heretofore presented, and caused to be presented, for approval and payment to an officer in the civil service of the United States, to wit, to the commissioner of pensions, a person duly authorized by law to approve the same, a certain claim against the government of the United States, to wit, a claim for invalid pension under the provisions of an act of congress approved June 27, 1890, a claim to be placed on the pension rolls of the United States, and setting forth in substance in said claim that he was the identical A. C. who was enrolled on the — day of —, 18—, in Company A, — Regiment, Massachusetts Colored Troops, as a private in the service of the United States in the war of the rebellion, and served at least ninety days, and was honorably discharged therefrom, and that he was partially unable to earn a support by manual labor by reason of two wounds by shells, and other disabilities, did then and there knowingly and unlawfully, and for the purpose of obtaining and aiding to obtain the approval of said claim, knowing it to be false and fraudulent, make a certain false deposition, which said deposition, subscribed to by said L. H., alias A. C., and taken and sworn to before A. R., a special examiner of the pension bureau of the United States, a person duly authorized by law to take the same, and wherein the law authorizes a deposition to be taken, and which said deposition contained the following statements, to wit: "During the late war I served as a mem-

ber of Company A, — Massachusetts Infantry." "I claim a pension on account of wounds on my right arm, and several wounds on my head, received at —, —, on the — day of —, 1864."

"I assumed the name of A. C. when I joined the — Massachusetts." "While I lived in — county, I was known by the name of L. H."

And the said deposition was false and fraudulent in this, to wit, that the said L. H., alias A. C., did not serve as a member of Company A, — Massachusetts Infantry, and was not wounded on his head at —, —, and did not assume the name of A. C., and did not join the — Massachusetts Infantry, as stated in his said deposition, as he then and there well knew; he, the said L. H., alias A. C., then and there well knowing said claim to be false, fraudulent, and fictitious, and then and there well knowing said deposition made in support of said claim to be false, fraudulent, and fictitious, and intending then, and there, and thereby to defraud the United States contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Third Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., alias A. C., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully cause to be presented for payment and approval to an officer in the civil service of the United States, to wit, the commissioner of pensions, a person duly authorized by the United States to approve claims for pensions, a certain claim upon the government of the United States under the provisions of an act of congress approved June 27, 1890, as being the identical A. C. who was enrolled on the — day of —, 18—, in Company A, — Regiment Massachusetts Colored Troops, as a private in the service of the United States in the war of the rebellion, and who served at least

ninety days, and was honorably discharged, and who was partially unable to earn a support by manual labor by reason of two wounds by shells, and other disabilities, knowing such claim to be false, fraudulent, and fictitious, and which said false, fraudulent, and fictitious claim is in the words and figures following, to wit, [*set out the claim in full*].

The said claim being false, fraudulent, and fictitious in this, to wit, that he, the said L. H., was not the identical A. C. who was enrolled on the — day of —, 18—, in Company A, — Regiment Massachusetts United States Colored Troops, as a private in the service of the United States in the war of the rebellion, as set forth in said declaration for invalid pension, as he, the said L. H., as aforesaid, then and there well knew, and he, the said L. H., alias A. C., intending then, there, and thereby to defraud the United States, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

A true bill.

United States Attorney.

H. B., Foreman.

(1) Taken from the record in U. S. *vs.* Jacob Warren, and sustained by the District Court of the United States for the Southern District of Ohio.

No. 488.

Demanding Illegal Fees of Pensioner in Violation of Revised Statutes, Section 5485, as amended July 4, 1884 (1).

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States, within and for the — District of —, in the — Judicial Circuit of the Term of —, in the year of our Lord one thousand eight hundred and —.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the

said district, upon their oaths and affirmations, present that L. H., on, to wit, the —— day of ——, in the year of our Lord one thousand eight hundred and ——, in the county of ——, in the state of ——, in the circuit and district aforesaid, and within the jurisdiction of this court, being then and there a person instrumental in prosecuting a claim for pension of one R. L. from the United States, did then and there unlawfully and knowingly demand from the said R. L. as and for his, the said L. H., compensation for his services and instrumentality in prosecuting said claim for a pension from the United States, a sum of money greater than and exceeding the amount provided and allowed therefor by law, to wit, a sum of money greater than and exceeding the sum of ten dollars, the amount of compensation then and there provided and allowed by law therefor, there being then and there no agreement of the said R. L. with the said L. H. filed with the commissioner of pensions touching and concerning the fees of the said L. H. in said claim, to wit, the sum of twenty-five dollars, the demand then and there by him, the said L. H., as aforesaid, of the said sum of twenty-five dollars as aforesaid, being then and there contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. J. H.,

United States Attorney.

A true bill.

H. B., Foreman.

(1) Taken from the record of the U. S. vs. I. I. Mitchell, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 489.**Forgery—Violation of R. S., Sections 5414, 5421 and 5431 (1).**

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and —.

The grand jurors of the United States of America duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully, feloniously, and falsely make and forge a certain obligation of the United States, to wit: a draft for money, to wit: the sum of ninety-four dollars, drawn by an authorized officer of the United States, to wit: D. L., major and paymaster of the United States army, upon the assistant treasurer of the United States at New York, and which said and falsely-made and forged obligation of the United States is in the words and figures following: [*here set forth in full the forged instrument*], and on the back of which said falsely-made obligation of the United States as aforesaid, were endorsed the words and figures following, to wit: [*here set forth in full the endorsement*].

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said L. H. did then and there falsely make and forge the said obligation of the United States in this, to wit: that the said L. H. did then and there falsely make and forge the name of the payee, to wit: the words W. B., with intent then, and there, and thereby to defraud, contrary to the form of the statute in such

case made and provided, and against the peace and dignity
of the United States of America.

J. H.,

United States Attorney.

A true bill.

H. B., Foreman.

(1) Taken from the record of the U. S. *vs.* Adrian I. Jones, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 490.

**Forging Endorsement upon Money Order (1) (R. S.,
Sec. 5463, as amended June 18th, 1888).**

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States, within and for the
— District of —, in the — Judicial Circuit, of the
Term of —, in the year of our Lord one thousand eight
hundred and —.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that, L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did, with intent to defraud, falsely forge and counterfeit a material signature and endorsement upon a certain money-order, issued under the direction of the post-office department of the United States, to wit, by the postmaster at —, —, and which said money-order was payable in the United States at —, —, to one T. H., and which said money-order, with its forged and counterfeit signature and endorsement, is in the following words and figures to wit: [*here set forth in full the order*].

He, the said L. H., intending then, and there, and thereby to defraud, contrary to the form of the statute in such case

made and provided, and against the peace and dignity of the United States of America.

J. H.,
United States Attorney.

A true bill.

H. B., Foreman.

(1) Taken from the record of the U. S. *vs.* Daniel Hogan, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 491.

Indictment for Perjury (1) (R. S., Sec. 5392).

The United States of America,

No. —.

— District of —, ss.

In the Circuit Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and —.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, being then clerk of the circuit and district courts of the United States for the — district of —, did then and there appear in his own proper person before J. S., the judge of the district court of the United States for the — district of —, and did take an oath before said judge that a certain written declaration by him subscribed was true, which said declaration was of the tenor and effect following, to wit, [*set forth the declaration in full*].

And so the grand jurors aforesaid, on their oaths and affirmations aforesaid, present that he, the said L. H., having taken the said oath before the said officer, who was

competent to administer the same, that said within declaration by him so subscribed, as aforesaid, was true, willfully and contrary to said oath did then and there unlawfully subscribe said matters heretofore set forth, which were material, and which he did not believe to be true, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, being the clerk of the circuit and district courts of the United States for the — district of —, did then and there make a written return to the attorney general of the United States, in the form prescribed by him, for the half year ending on the — day of —, thereto preceding, of all the fees and emoluments of his said office of every name and character, and of all the necessary expenses of his office for such last half year, and did then and there appear in his own proper person before J. S., the judge of the district court of the United States for the — district of —, and did take and subscribe an oath before the said judge, who had competent authority to administer the same, of the tenor and effect following, to wit, [*set forth the return in full*]; which said return so sworn to by the said L. H., as aforesaid, contained among other things the following account of his fees and emoluments as clerk of said courts during the said half of the year, to wit, [*set forth account in full*]; when in truth and in fact the said account was not in all respects just and true according to his best knowledge and belief, and in truth and in fact he had received directly and indirectly other money than therein stated, to wit, more than — dollars as fees and emoluments earned from individuals in the district court,

more than — dollars as fees and emoluments earned from individuals in cases in bankruptcy in the district court, and more than — dollars as fees and emoluments earned from individuals in the circuit court; and in truth and in fact he was entitled to emoluments for the period therein mentioned other than those therein specified, to wit, more than, — dollars as fees and emoluments earned from individuals in the district court, a large amount earned from individuals in cases in bankruptcy in the district court, and more than — dollars as fees and emoluments earned from individuals in the circuit court; and in truth and in fact the total gross emoluments earned by him during the said period were more than — dollars, all of which he, the said L. H., then and there well knew.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, present that the said L. H., having taken the said oath before said officer, who was competent to administer the same, that said written declaration by him so subscribed as aforesaid was true, willfully and contrary to said oath, did then and there unlawfully subscribe said matters hereinbefore set forth, which were material, and which he did not believe to be true, contrary to the form of the statute in such case made and provided, and against the peace any dignity of the United States of America.

Third. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, being the clerk of the circuit and district courts of the United States for the — district of —, did then and there make a written return to the attorney general of the United States, in the form prescribed by him for the half year ending on the — day of —, heretofore preceding, of all the fees and emoluments of his said office of every name and character, and of all the

necessary expenses of his office for such last half year, and did then and there appear in his own proper person before J. S., the judge of the district court of the United States, for the — district of —, and did take and subscribe an oath before said judge, who had competent authority to administer the same, of the tenor and effect following, to wit, [*set forth oath in full*], which said written return so sworn to by the said L. H., as aforesaid, contained the following account of his fees and emoluments as clerk of said courts during the said half year, to wit, [*here set forth the account in full*], when in truth and in fact, the said account was not in all respects just and true according to his best knowledge and belief, and in truth and in fact, he had received directly and indirectly, other money than as therein stated, to wit, more than — dollars as fees and emoluments earned from individuals in the district court, more than — dollars as fees and emoluments earned from individuals in cases of bankruptcy, and more than — dollars as fees and emoluments earned from individuals in the circuit court; and in truth and in fact, he was entitled to emoluments for the period therein mentioned other than those therein specified, to wit, more than — dollars as fees and emoluments earned from individuals in the district court, a large amount earned from individuals as fees and emoluments in cases of bankruptcy in the district court, and more than — dollars as fees and emoluments earned from individuals in the circuit court; and in truth and in fact, the total gross emoluments earned by him during the said period were more than — dollars, all of which he, the said L. H., then and there well knew, and so the grand jurors aforesaid, on their oaths and affirmations aforesaid, present that the said L. H., having taken the said oath before the said officer, who was competent to administer the same, that the said written declaration by him so subscribed as aforesaid was true, willfully and contrary to said oath, did then and there unlawfully subscribe said matters hereinbefore set forth, which were mate-

rial, and which he did not believe to be true, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Fourth. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that L. H., on, to wit, the — day of —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, being the clerk of the circuit and district courts of the United States for the — district of —, and having made in writing an account against the government of the United States for service performed by him as clerk of said courts during the last half of the year eighteen hundred and —, did then appear in his own proper person before J. S., the judge of the district court of the United States for the — district of —, and take and subscribe an oath before said judge, who had competent authority to administer the same, of the tenor and effect following, to wit:

L. H., being duly sworn, says that the services charged in the foregoing account have been actually and necessarily performed as therein stated, which said account, with the aforesaid oath attached thereto, was thereupon presented to the circuit court of the United States for the — district of —, and said account was, by said oath thereto attached, proved to the satisfaction of the court; and the said court thereupon caused to be entered of record an order approving the said account, and the said account so approved was forwarded to the proper accounting officer of the treasury, to wit, the first auditor of the treasury, which said account, so sworn to by the said L. H. as aforesaid, including services for recording the proceedings of the circuit court of the United States in certain cases theretofore pending therein, wherein the United States was a party, to wit [*set forth the names of all the cases*], when, in truth and in fact, the said services had not been actually performed, the proceedings of

the circuit court in said cases not having been recorded, as the said L. H. then and there well knew.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, present that the said L. H., having taken the said oath before the said officer, who was competent to administer the same, that said written certificate by him so subscribed as aforesaid was true, willfully, and contrary to said oath, did then and there unlawfully subscribe said matters hereintofore set forth, which were material, and which he did not believe to be true, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

A true bill.

United States Attorney.

H. B., Foreman.

(1) Taken from the record in the U. S. *vs.* Thomas Ambrose. See U. S. *vs.* Ambrose, 108 U. S., 336.

No. 492.

Making Counterfeit Coin (1) (Act of July 10, 1891).

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States, within and for the — District of —, in the — Judicial Circuit, of the Term of —, in the year of our Lord one thousand eight hundred and —.

First Count. The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., on, to wit, the day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully, knowingly, and feloniously

have in his possession, without authority from the secretary of the treasury of the United States, or other proper officer, certain, to wit, six moulds of plaster and other substance in likeness and similitude as to the design and inscription upon said moulds of the design and inscription upon the dies, hubs, and moulds designated for the coining and making of the genuine silver and nickle coin, to wit, quarter dollars, dimes, and five-cent pieces of the United States that have been coined at the mints of the United States, with intent then and there to fraudulently and unlawfully use the same in molding and coining counterfeit quarter dollars, dimes, and five-cent pieces in the similitude of the silver quarter dollars, dimes, and nickle and copper five-cent coins coined at the mints of the United States, with intent then, there, and thereby to defraud, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Second Count. And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said L. H., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully, knowingly, feloniously, and falsely make and forge a large number, to wit, twenty false-forged and counterfeit coins in the likeness and similitude of the true and genuine silver quarter dollars and dimes coined at the mints of the United States, with intent to utter the same as true and genuine, and with intent then, and there, and thereby to defraud, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

A true bill.

United States Attorney.

H. B., Foreman.

(1) Taken from the record in U. S. vs. Richard Reeve, and sustained in the District Court of the United States for the Southern District of Ohio.

No. 493.**Passing Counterfeit Money (1) (R. S. Sec. 5431).**

The United States of America,

No. —.

— District of —, ss.

In the Circuit Court of the United States, within and for the
 — District of —, in the — Judicial Circuit, of the
 Term of —, in the year of our Lord one thousand eight
 hundred and —.

The grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations, present that L. H., alias N. B., on, to wit, the — day of —, in the year of our Lord one thousand eight hundred and —, in the county of —, in the state of —, in the circuit and district aforesaid, and within the jurisdiction of this court, did then and there unlawfully, knowingly, and feloniously utter, publish, and pass upon H. H. a false, forged, and counterfeit obligation of the United States, to wit, an United States treasury note of the denomination of five dollars, in the resemblance and similitude of the true and genuine obligations of the United States, to wit, United States treasury notes of the denomination and value of five dollars, and which said false, forged, and counterfeit obligation of the United States is of the following tenor and effect, that is to say [*here set forth in full copy of note*], and upon which said false, forged, and counterfeit obligation of the United States were endorsed the words and figures following, to wit [*set forth endorsement in full*], he, the said L. H., alias N. B., then and there well knowing the same to be false, forged, and counterfeit, and intending then and there to defraud, contrary to the form of the statue in such case made and provided, and against the peace and dignity of the United States of America.

A true bill.

J. H.,

H. B., Foreman.

United States Attorney.

(1) Taken from the record of the U. S. *vs.* Nicholas Damore, and sustained in the Circuit Court of the United States for the Southern District of Ohio.

No. 494.**Against a Retail Liquor Dealer Selling Liquor—For not
Paying Special License Tax.**

The United States of America,

— District of — ss.

In the District [*or*, Circuit] Court of the United States, within
and for the — District of —, in the Sixth Judicial
Circuit, of the Term of —, in the year of our Lord
one thousand eight hundred and ninety —.

The grand jurors of the United States of America, duly
empaneled, sworn, and charged to inquire within and for the
said district, upon their oaths and affirmations, present that
L. H., of —, on, to wit, the — day of —, in the year of
our Lord one thousand eight hundred and ninety —, in
the county of —, in the state of Ohio, in the circuit and
district aforesaid, and within the jurisdiction of this court,
did then and there unlawfully carry on the business of a re-
tail liquor dealer without having paid the special tax of
twenty-five dollars as required by law, and the said L. H.
did then and there offer for sale and sell to J. B. and to vari-
ous other persons whose names are to the said grand jury
unknown, foreign and domestic distilled spirits, wines, and
malt liquors, otherwise than as provided by law, in less
quantities than five gallons at the same time, contrary to the
form of the statute in such case made and provided, and
against the peace and dignity of the United States of
America.

J. H.,

United States Attorney.

A true bill,

H. B., Foreman.

No. 495.**Petition for Removal of Criminal Case from the State
Court to United States Court.**

For form see under title "Removal from State Courts."

No. 496.**Criminal Information.**

The United States of America,

— District of —.

At the — term of the United States district court for the — district of —, in the year of our Lord one thousand eight hundred and —, leave of the court being first had and obtained, comes J. H., attorney for the United States for said district, and informs the court that, as appears from a complaint made under oath and transcript of proceedings held before J. N., a Commissioner for the circuit court of the United States for the — district of —, and on file in this court, and who, after examination of the charge, found that there was probable cause to hold the defendant to bail, that one L. H., on the — day of —, A. D. 1894, at —, in said district, did then and there unlawfully retain the certificate of a pensioner of the United States, to wit, one J. M., issued to him and his name, and refused to surrender the same upon the demand of the pensioner, J. M. contrary to the form of an act of Congress approved February 28, 1883, in such case made and provided, and against the peace and dignity of the United States of America.

J. H.,

United States Attorney.

No. 497.

Information. Seizure under the Revenue Laws.
(General Form.)

The District Court of the United States,
for the — District of —.

Before the Honorable G. W., Judge.

On the — day of —, in the year of our Lord one thousand eight hundred and —, comes J. H., as attorney of the United States for the said — district of —, in a cause

of seizure on land [*or as may be*] under the revenue laws of the United States, and informs the court;

That on the — day of —, in the year of our Lord one thousand eight hundred and —, A. B., collector of the customs for the port and collection district of —, seized on land [*or, vessel, or as may be*], within the said district, the property described as follows: [*here set forth the place of seizure and a list of the articles seized*], the property above mentioned, said to belong to C. D., and now the said A. B. has the same in custody within the — district of — aforesaid, as forfeited to the United States for the following causes:

[*Here state the several grounds of forfeiture in separate articles and proceed.*]

And the said attorney of the United States, on behalf of the United States, says that all and singular the premises are true, and that by reason thereof, and by force of the statute in such case made and provided, the aforementioned property, goods, wares, and merchandise, as hereinbefore particularly specified, became and are forfeited to the United States as in said statute provided.

Wherefore he prays that the usual process and monition of this honorable court issue in this behalf; and that all persons interested in the said property, goods, wares, and merchandise, etc., may be cited and admonished in general and special to answer the premises; and, all due proceedings being had thereon, that, for the causes aforesaid, and others appearing, the said property, goods, wares, and merchandise, etc., as before set forth, be condemned by the definite sentence and decree of this honorable court as forfeited to the use of the United States, according to the form of the statutes of the United States in such case made and provided.

J. H.,

United States Attorney for the
— district of —.

No. 498.**Information—Admiralty.**

For form of Libel of Information, see form under title "Admiralty."

No. 499.**Libel of Information—Seizure of a Distillery (1).**

The United States of America,

No. —.

— District of —, ss.

In the District Court of the United States within and for the

— District of —, of the Term of —, 18—.

The information of J. H., United States Attorney within and for the — district of —, who prosecutes in this behalf for the said United States, and being present here in court in his own proper person, doth disclose and make known to the court;

That W. T., Esquire, deputy collector of internal revenue for the first collection district of the state of —, heretofore, to wit, on the — day of —, 18—, on land, at —, county of —, and state of —, and within said — district of —, seized the following described property for a forfeiture incurred under the laws of the United States, that is to say, one two-story stone and brick building, 60 by 40 feet, used as a distillery; a one-story frame building, 43 by 23 feet, used as a cistern and drawing-off rooms; a one-story frame building, 15 by 30 feet, used as a warehouse; also, all that certain lot of ground situated in the city of —, county of —, and state of —, in S. W.'s subdivision, recorded in plat book No. —, page —, — county records, being part of section —, township —, fractional range —, of the — purchase, commencing at a point, etc. [*set forth description in full*], and also the following [*here state in full contents of the buildings and property seized*], and now has the same in custody within said — district of —, as forfeited for the following causes:

That prior to said seizure taxes were imposed by the provision of law upon the said distilled spirits, and the same being so subject to the payment of taxes as aforesaid, were found by the said W. T., deputy collector, in the possession and custody and with the control of some person or persons to said attorney unknown, for the purpose of being sold and removed by such person or persons in fraud of the internal revenue law, and with design to avoid payment of said taxes against Section 3453 of the Revised Statutes of the United States.

Second. That the said corn, rye, etc., then and there being articles of raw material, were found in the possession of some person or persons to the said attorney unknown, the said person or persons then and there intending to manufacture the same into articles of a kind subject to tax, for the purpose of fraudulently selling such manufactured article, and with design to evade the payment of said taxes, against the aforementioned Section 3453 of the Revised Statutes of the United States.

Third. That said tools, implements, instruments, and personal property were found in the place, or building, and within certain yards and enclosures where said distilled spirits and said raw material were found as aforesaid, whereby they became liable to forfeiture by the provisions of the aforementioned Section 3453 of the Revised Statutes of the United States.

Fourth. That prior to said seizure, tax was imposed on said goods and commodities, consisting of distilled spirits, and said material, and utensils, and vessels, then and there being materials, utensils, and vessels proper, and intended to be made use of for and in the making of such goods and commodities taxed as aforesaid, were removed, and were deposited and concealed with intent to defraud the United States of such tax, or some part thereof, against Section 3450 of the Revised Statutes of the United States aforesaid.

Fifth. That the carts, wagons, and conveyances and said horses and other animals were used in the removal and for the deposit and concealment of said goods and commodities consisting of distilled spirits, said goods and commodities then and there being forfeited to the United States, against the Section 3450 aforementioned.

Sixth. The said distilled spirits and wines, and said stills and other apparatus, the still and other apparatus then and there being fit and intended to be used for the distillation of spirits within the meaning of the internal revenue laws, were owned by some person or persons to said attorney unknown, who engaged in and carried on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by such person or persons, against Section 3281 of the Revised Statutes of the United States aforesaid.

Seventh. That the said distilled spirits, wines, and personal property were found in a certain distillery and in a certain building, room, yard, and enclosure connected therewith and used with and constituting a part of the premises, and that some person or persons to the said attorney unknown, did, in said distillery, carry on then and there the business of a distiller, with intent to defraud the United States of the tax on the spirits distilled by said person or persons, against Section 3281 of the Revised Statutes of the United States aforesaid.

Eighth. That some person or persons to the said attorney unknown, then and there having a certain right, title, and interest in the lot and tract of land on which said distillery was situate, did knowingly suffer and permit some person or persons to said attorney unknown, to carry on the business of a distiller upon said premises, and did connive at the said person or persons carrying on the business with intent to defraud the United States of the tax on the spirits distilled by such person or persons, against Section 3281 of the Revised Statutes of the United States aforesaid.

Ninth. That said personal property was owned by and found in the possession of some person or persons to said

attorney unknown in a certain building, yard, and enclosure, which said person or persons permitted and suffered the said building, yard, and enclosure to be used for the purpose of ingress and egress to and from said distillery situate as aforesaid in — aforesaid, wherein said person or persons to said attorney unknown, did carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by such person or persons, whereby said personal property, and the right, title, and interest of said person or persons so permitting and suffering said premises to be used as aforesaid, became forfeited to the United States under and by virtue of the aforementioned Section 3281 of the Revised Statutes of the United States.

Tenth. That some person or persons to said attorney unknown, being engaged in carrying on the business of a distiller at the said distillery where said still and other apparatus were situated, did defraud and attempt to defraud the United States of the tax on the spirits distilled by him and them, and that the said distillery and distilling apparatus were used by him and them, and said distilled spirits and raw material for the production of distilled spirits, were found in said distillery and on the distillery premises against Section 3257 of said Revised Statute of the United States.

And the said attorney of the United States, on behalf of the United States, saith that all and singular the premises are true, and that by reason thereof and by force of the statute in such case made and provided, the aforementioned property, goods, wares, and merchandise as hereinbefore set forth became and are forfeited to the use of the United States as in said statute provided.

Wherefore he prays that the usual process and monition of this honorable court issue in this behalf, and that all persons interested in said property, real estate, goods, wares, etc., may be cited and admonished in general and special to answer the premises, and that all due proceedings being had thereon, that for the causes aforesaid and others appearing, that said

property, real estate, goods, wares, etc., before set forth, be condemned by the definite sentence and decree of this honorable court as forfeited to the use of the United States, according to the form of the statute of the United States in such case made and provided.

J. H.,

United States Attorney.

(1) Taken from the record of the U. S. *vs.* One Distiller and other property, and sustained in the District Court of the United States for the Southern District of Ohio.

PROCEEDINGS AFTER INDICTMENT.

No. 500.

Capias ad Respondendum.

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal of the — District of —, Greeting:

We command you to take L. H., if he may be found in your bailiwick, and him safely keep, so that you have his body before the judges of the district, [*or*, circuit] court of the United States for the — district of —, at the city of —, in said district, forthwith to answer unto the United States of America on an indictment for violation of Section — of the Revised Statutes of the United States, presented to said court against him, the said L. H., on the — day of —, 1894, by the grand jury of the United States within and for the — district of —.

Hereof fail not under the penalty of the law, and have then and there this writ.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 501.

Recognizance for Appearance before the Court.

The United States of America,

— District of —, ss.

Be it remembered, that on this — day of —, 1894, before me, B. R., clerk of the district [*or*, circuit] court of the United States within and for the district aforesaid, duly appointed as such by the said court, personally came L. H., as

principal, and E. L. and J. P., as sureties, and jointly and severally acknowledged themselves to owe the United States of America the sum of — dollars, to be levied on their goods and chattels, lands, and tenements, if default be made in the condition following, to wit:

The condition of this recognizance is such that if the said L. H. shall personally appear before the district [*or*, circuit] court of the United States in and for the — district of —, at the city of —, state of —, from day to day, and then and there to answer unto an indictment pending therein for violation of Section — of the Revised Statutes of the United States, and then and there abide the further order of said court, and not depart without leave thereof, then this recognizance to be void; otherwise to remain in full force and virtue.

L. H. [*Seal.*]

E. L. [*Seal.*]

J. P. [*Seal.*]

Taken and acknowledged before me the day and year as above written.

B. R.,

[*Seal.*]

Clerk of the District [*or*, Circuit] Court
of the United States for the —
District of —.

[*Justification of sureties as in No. 36.*]

No. 502.

Temporary Mittimus.

The United States of America,

— District of —, ss.

The United States

No. —.

vs.

L. H.

} Indictment for [*crime charged*].

The President of the United States of America to the Marshal of the — District of —, Greeting:

The defendant, L. H., having been arrested on a *capias ad respondendum* issued upon the *præcipe* of the district attorney

for said district, and having been arraigned at the bar of the district [*or, circuit*] court of the United States, within and for the district aforesaid, and said indictment read to him, for plea says that he is not guilty as therein and thereby charged; and being required to enter into a recognizance in the sum of — dollars for his appearance before said court, from day to day, with good and sufficient security, and not complying with the order of the court, is remanded into the custody of the marshal, to be committed to the jail of — county, in the state of —, until the further order of the court aforesaid.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 503.

Motion to Quash Indictment (1).

The United States of America,

—District of —, ss.

The United States	}	Indictment for making a Fraudulent Claim.
<i>vs.</i>		
L. H.		

Now comes the defendant, L. H., by his counsel, and moves the court to quash the first count in the indictment herein for the following reasons :

First. Said count does not definitely state whether the offense sought and intended to be charged is one for “making” a false claim upon and against the government, knowing the same to be false, or whether it is for “causing” a false claim to be made upon and against the government, or whether it is for “presenting” a false claim upon or against the government, or for “causing” to be presented a false “claim” upon or against the government.

Second. The said count does not aver that the defendant at any time presented to or asked for the payment, approval, or allowance of said false claim to or by the government, or

that said false claim was at any time presented to or asked of any department or officer of the government by the defendant for payment, allowance, or approval.

Third. Said count of said indictment is indefinite, uncertain, and insufficient in law in that it does not state or specify to what "vicious habit" of the defendant the alleged disability of the defendant was due.

Said count of said indictment is too indefinite and uncertain for the foregoing reasons and in the foregoing respects to apprise the defendant of the nature of the charge against him.

The defendant, by his counsel, also moves the court to quash the second count of said indictment for the following reasons :

First. Said count is indefinite, uncertain, and insufficient in law in that it does not state whether the alleged "false deposition" was presented by defendant or caused to be presented by defendant, nor does it state whether it was for the purpose of obtaining, or for the purpose of aiding to obtain, the approval of a false and fraudulent claim against the government.

Second. Said count is also indefinite, uncertain, and insufficient in law in that it does not state to what "vicious habit" of the defendant the wound in the left arm is due.

Third. Said second count of said indictment is too insufficient and uncertain to sufficiently apprise the defendant of the alleged false and fictitious statement, in that the alleged false and fictitious statement, to wit: "The said L. H. did not receive said wound in the arm in the said election riot," and the statement, "The said wound was due to his L. H.'s own vicious habits" are not deposed to by the defendant in the alleged false deposition set forth in said count.

Y. & Y.,

Attorneys for Defendant.

(1) Taken from the record in U. S. *vs.* William Carter, District Court of the United States, Southern District of Ohio.

No. 504.**Plea of Misnomer.***[Caption.]*

And John Jones, who is indicted by the name of George Jones, in his own proper person now comes into court, and having heard the said indictment read, says that he was baptized by the name of John, to wit, at —, in the county of —, in the state of —, and by the Christian name of John; and has also, since his baptism, been called and known by the name of John, without this, that he, the said John Jones, now is or at any time hitherto has been called or known by the Christian name of George, as by the said indictment is alleged, and this the said John Jones is ready to verify; wherefore he prays judgment of the said indictment, and that the same may be quashed, etc.

R. Y.,

Attorney for Defendant.

No. 505.**Verification of Above Plea.**

State of —,

County of —, ss.

John Jones, the defendant in this prosecution, makes oath and says that the foregoing plea is true in substance and matter of fact, and that the defendant was baptized by the name of John, and has never been known or called by any other Christian name.

John Jones.

Subscribed and sworn to before me this — day of —, 1894.

J. N.,

[Seal.]

Notary Public in and for —.

No. 506.**Replication to a Plea of Misnomer.***[Caption.]*

And hereupon J. H., the attorney for the United States, who prosecutes in behalf of the said United States, says

that the said indictment, by reason of anything by the said John Jones in his said plea alleged, ought not to be quashed, because the said John Jones, long before, and at the time of the preferring of said indictment, was, and still is, known as well by the name of George Jones as by the name of John Jones, to wit, at —, in the county of —, in the state of —, and this the said J. H. prays may be inquired of by the country, etc. J. H.,

United States Attorney.

No. 507.

Special Plea.

[*Caption.*]

And now comes the said L. H. in his own proper person into court, and having heard the said indictment read, says that the said United States ought not further to prosecute this indictment against him, the said L. H., because he says [*here set forth the grounds of the plea*]; and this the said L. H. is ready to verify; wherefore he prays judgment, and that he may be dismissed and discharged by this court from the said premises in the said indictment above specified.

R. Y.,

Attorney for Defendant.

No. 508.

Replication to Special Plea.

[*Caption.*]

And now comes J. H., attorney for the United States, in and for the — district of —, who prosecutes for the said United States in this behalf, and says that the United States ought not to be precluded from prosecuting the said indictment against the said L. H. by reason of anything pleaded in bar as alleged in this plea of the said defendant, L. H., for the reason that [*here set forth the grounds for the replication*]; and this the said J. H. prays may be inquired of by the country.

Wherefore he prays judgment, and that the said L. H. may be convicted of the premises in the said indictment above specified.

J. H.,
United States Attorney.

No. 509.

Plea of Former Jeopardy. (Conviction.)

[Caption.]

And the said L. H., in his own proper person, now comes into court, and having heard the said indictment read, and protesting that he is not guilty of the premises charged in the said indictment, says that the said United States ought not further to prosecute the said indictment against the said L. H. in respect of the offense in the said indictment mentioned, because he says that heretofore, to wit, at the supreme judicial court, begun and held at —, etc., [*set forth the former judgment and conviction verbatim, and then proceed as follows:*] as by the record thereof, in the said court remaining, more fully appears: which said judgment and conviction still remains in full force and effect, and not in the least reversed or made void. And the said L. H. further says that the said L. H. and the L. H. so indicted and convicted are one and the same person, and not other and different persons. And the said L. H. further says that the [*crime charged*] of which the said L. H. was so indicted and convicted as aforesaid, and the [*crime charged*] for which he is now indicted, are one and the same [*crime charged*], and not other and different [*crimes charged*]. And this the said L. H. is ready to verify; wherefore he prays judgment if the said United States ought further to prosecute the said indictment against the said L. H. in respect of the said offense in the said indictment mentioned, and that the said L. H. may be dismissed and discharged from the same.

R. Y.,
Attorney for Defendant.

No. 510.**Plea of Former Jeopardy. (Acquittal).**

[*Caption.*]

And the said L. H., in his own proper person, now comes into court, and having heard the said indictment read, and protesting that he is not guilty of the premises charged in the said indictment, says that the United States ought not further to prosecute the said indictment against the said L. H., because he says that heretofore, to wit, at the district court of the United States for the — district of —, at the — term of the said court it was presented that the said L. H. then and there [*here set forth the indictment, reciting it in the past tense; recite also the remainder of the record to the end of the judgment in the past tense in like manner, then proceed*]; as by the record thereof more fully and at large appears, which judgment still remains in full force and effect and is not in the least reversed or made void, and the said L. H. in fact says that he, the said L. H., and the said L. H. so indicted and acquitted as last aforesaid, are one and the same person and not other and different persons, and that the [*crime charged*] of which the said L. H. was so indicted and acquitted as aforesaid, and the [*crime charged*] of which he is now indicted, are one and the same [*crime charged*] and not other and different [*crimes charged*], and this the said L. H. is ready to verify: wherefore he prays judgment, and that by the court he may be dismissed and discharged from the said premises in the present indictment specified. R. Y.,

Attorney for Defendant.

No. 511.**Demurrer to an Indictment or Information.**

[*Caption.*]

And now comes L. H. in his own proper person into court, and having heard the said indictment [*or, information*] read,

says that the said indictment [*or*, information] and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law, and that he, the said L. H., is not bound by the law of the land to answer the same, and this he is ready to verify; wherefore, for want of sufficient indictment [*or*, information] in this behalf, the said L. H. prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment [*or*, information] specified.

R. Y.,
Attorney for Defendant.

No. 512.

Joinder to Demurrer (1).

[*Caption.*]

And J. H., United States attorney for the — district of —, who prosecutes in behalf of the said United States, says that the said indictment and the matters therein contained in manner and form as the same are above stated and set forth are sufficient in law to compel the said L. H. to answer the same, and the said J. H., who prosecutes, as aforesaid, is ready to verify and prove the same as the court here shall direct and award.

J. H.,
United States Attorney.

(1) In most circuits the joinder to a demurrer is made orally.

No. 513.

Demurrer to a Plea in Bar.

[*Caption.*]

And J. H., United States attorney for the — district of —, who prosecutes in behalf of the said United States, as to the said plea of the said L. H., by him pleaded herein, says that the same and the matters therein contained in manner and form as the same are above pleaded and set

forth, are not sufficient in law to bar or preclude the United States from prosecuting the said indictment against the said L. H., and that the said United States are not bound by the law of the land to answer the same, and this, the said J. H., who prosecutes, as aforesaid, is ready to verify, wherefore, for want of sufficient plea in this behalf, the said J. H., for the United States, prays judgment, and that the said L. H. may be convicted of the premises of the said indictment specified.

J. H.,
United States Attorney.

No. 514.

Joinder to a Demurrer to a Plea (1).

[Caption.]

And now comes the said L. H., and says that his said plea by him pleaded herein and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the United States from prosecuting the said indictment against him, the said L. H., and the said L. H. is ready to verify and prove the same as this court shall direct and award. R. Y.,

Attorney for Defendant.

(1) See note to No. 512.

No. 515.

Journal Entry on Plea "Nolo Contendere" (1).

[Caption.]

This day came L. H., defendant in this case, in open court, and leave of court being first had and obtained, withdrew his plea of not guilty, heretofore pleaded in this case, and the said L. H. makes known to the court that he is unwilling to contest the charges set forth against him in the [second] count of the indictment, and that he herewith enters a plea of *nolo contendere* to said [second] count of the

indictment, and throws himself on the mercy of the court, and thereupon J. H., attorney for the United States for the — district of —, dismisses the [first, third, *etc.*, as may be] counts of said indictment, and thereupon the court, proceeding to sentence the said L. H., doth adjudge him to pay a fine of — dollars.

(1) See Bishop on Criminal Prac., Sec. 469.

No. 516.

Petition for Writ of Habeas Corpus ad Testificandum.

The Circuit Court of the United States,
— District of —.

The United States <i>vs.</i> L. H.	}	Petition for Writ of <i>Habeas Corpus</i> <i>ad Testificandum.</i>
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To the Honorable, the Circuit Court of the United States
for the — District of —:

The petition of J. H., United States attorney for the —
— district of —, respectfully shows to this honorable
court that one C. B. is confined in the — county jail at
—, —, and is in the custody of A. M., the sheriff of the
said county of —, at said place, under authority of the
United States and in accordance with the laws thereof, hav-
ing been convicted of an offense against the laws of the
United States, and sentenced to imprisonment in said jail
for — years, from —, 1894, by virtue of which the said
sheriff now holds the said C. B.

Your petitioner avers that the said C. B. is a material wit-
ness in the above-entitled cause on behalf of the plaintiffs,
and that the said cause is set for trial the — day of —,
1894.

Wherefore your petitioner prays that this honorable court
do forthwith order the writ of *habeas corpus ad testificandum*
to issue from this court to the said A. M., sheriff, as afore-

said, requiring him to produce the body of said C. B. before this court on said — day of —, 1894, to testify on behalf of the plaintiff in the above-entitled cause, and as in duty bound your petitioner will ever pray, etc. J. H.,
United States Attorney.

No. 517.**Writ of Habeas Corpus ad Testificandum.**

The United States of America,

— District of —, ss.

To the Sheriff of — County, —, Greeting:

We command you, that you have the body of C. B., detained in the jail of said county under your custody, as it is said, under safe and secure conduct, before the judges of our district [*or*, circuit] court within and for the district aforesaid, on the — day of —, 1894, by ten o'clock in the forenoon of the same day, there to testify the truth according to his knowledge, in a certain cause now pending in said court, and then and there to be tried, between the United States, plaintiffs, and L. H., defendant, on the part of the United States, and immediately after the said C. B. shall then and there having given his testimony before our said judges, that you return him, the said C. B., to the said jail of — county, under safe and secure conduct, and have you then and there this writ.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 518.**Verdict—Guilty.**

[*Caption.*]

We, the jury, find the defendant guilty as charged in the indictment.

S. W.,
Foreman.

No. 519.

Verdict by Jury—Guilty.

[*Caption.*]

We, the jury herein, do find the defendant guilty in manner and form as charged in the first and third counts of said indictment, and not guilty as charged in the remaining counts thereof.

S. W.,
Foreman.

No. 520.

Verdict—Not Guilty.

[*Caption.*]

We, the jury, find the defendant not guilty.

S. W.,
Foreman.

No. 521.

Motion in Arrest of Judgment.

The Circuit Court of the United States,
for the — District of —.

The United States
vs.
L. H.

} Motion in Arrest of Juagment.

And now comes the defendant, and moves the court to arrest judgment on each and every count in the indictment herein upon which the defendant was convicted, because the facts therein stated do not constitute an offense against the laws and statutes of the United States.

Y. & Y.,
Attorneys for Defendant.

No. 522.

Entry of Distribution upon Payment of Fine.

[*Caption.*]

Upon motion of the United States attorney, and it appearing to the court that the sum of \$—— has been made by the

marshal upon a *feri facias* issued in this court, and the same paid into the registry of the court, and the court proceeding to distribute the same, orders and directs that the said sum of \$—— be paid to the assistant treasurer of the United States at ——, for the use of the —— department of the United States.

No. 523.

Final Commitment.

The District [*or*, Circuit] Court of the United States,
—— District of ——.

The United States	}	Indictment No. ——.
<i>vs.</i>		
L. H.		

The defendant, L. H., having been tried and found guilty, as charged in the said indictment, for violation of Section —— of the Revised Statutes of the United States.

Thereupon the court pronounced the following sentence, to wit: that the said L. H. be imprisoned in the penitentiary of the state of —— for the term of —— years [and that he pay a fine of \$——, and the costs of this prosecution to be taxed, *as the case may be*]; therefore, this is to command the marshal of said district to take the body of the said L. H. and commit the same to the penitentiary of the state of —— pursuant to the above sentence.

[*Add teste, according to the court issuing the commitment.*
See Nos. 30 and 31.]

HABEAS CORPUS.

No. 524.

Petition for Writ of Habeas Corpus (1).

The District [*or*, Circuit] Court of the United States,
—— District of ——.

In the matter of the application of L. H. for a writ of *habeas corpus*.

To the Honorable Circuit Court of the United States in and for the —— District of ——:

Your petitioner, L. H., respectfully represents and shows to this honorable court that he is a citizen of the United States and a resident of Oklahoma Territory; that he is unjustly and unlawfully detained and imprisoned in the penitentiary at ——, ——, by C. J., warden of said penitentiary, by virtue of a warrant of commitment, a copy of which is hereto attached, marked Exhibit "A."

Your petitioner further shows that at the —— term, 18——, of the district court of the first judicial district within and for —— county, Oklahoma Territory, and for the Indian country, attached thereto for judicial purposes, sitting with the powers of a district court of the United States of America, and the grand jurors of the United States of America, within and for said country, and that part of the Indian country attached to said country for judicial purposes, having been empaneled, sworn, and charged to inquire of offenses against the laws of the United States, committed within that part of Oklahoma Territory so attached to —— county for judicial purposes, as aforesaid, found an indictment against your petitioner for the larceny of horses in that part of the territory attached for judicial purposes to —— county, as

aforesaid, which said part of said territory was then and there Indian country, and a place and district of country alleged to be then and there under the sole and exclusive jurisdiction of the United States of America, a copy of which indictment is hereto attached, marked Exhibit "B."

Your petitioner further shows that he was tried upon said indictment by said court sitting with the powers of a district court of the United States of America, as aforesaid, convicted and sentenced by said court "to be confined for a period of five years in the penitentiary at —, —, at hard labor; and said term of service to commence from the — day of —, 1894, at ten o'clock, and that he pay the costs of this action."

Your petitioner further shows that his term of imprisonment did, in fact, begin on the — day of —, 1894, and that he has ever since been and still is confined in said penitentiary under said sentence.

Your petitioner further shows that his detention and imprisonment, as aforesaid, is illegal, in this, to wit:

First. That the sentence under which your petitioner is held is excessive, illegal, and void.

Second. That the commitment under which your petitioner is held is illegal and void.

Third. That the court was without jurisdiction to impose the particular sentence under which your petitioner is held.

Fourth. That the court was without jurisdiction or power to sentence your petitioner to imprisonment in a penitentiary for the offense of which he was convicted.

Fifth. That your petitioner's imprisonment and detention under said sentence is contrary to the laws of the United States.

Sixth. That your petitioner has already served a longer term of imprisonment than could be imposed by law.

Seventh. That there is no judgment of the court upon which to pass sentence, or to base the commitment herein.

Eighth. There is no record of the indictment and trial herein, as required by law.

Ninth. That the commitment does not set out the sentence as passed by the court, as required by law.

Tenth. That the court which passed the above sentence was without the jurisdiction of the offense charged, and that the sole and exclusive jurisdiction thereof was in the district court of Oklahoma Territory sitting as a territorial court, and not in the United States courts.

Wherefore, to be relieved of said unlawful detention and imprisonment, your petitioner prays that a writ of *habeas corpus*, to be directed to the said C. J., warden of the ——— penitentiary, may issue in this behalf, so that your petitioner may be forthwith brought before this court to do, submit to, and receive what the law may direct. L. H.

(1) The warrant of commitment, marked Exhibit "A," and the indictment, marked Exhibit "B," should be attached to the petition, and the petition should be verified by an affidavit of the petitioner. For form see No. 525.

See also Desty's Fed. Proc., Sec. 359 *et seq.*; R. S., Sec. 751 *et seq.*; Foster's Fed. Prac., Secs. 366 and 367, and notes.

No. 525.

Affidavit of Petitioner.

State of ———,
County of ———, ss.

L. H., being duly sworn, deposes and says, that he is the petitioner named in the foregoing petition subscribed by him; that he has read the same, and knows the contents thereof, and the said statements made are true, as he verily believes.

L. H.

Sworn to by the said L. H. before me, and by me subscribed, on this ——— day of ———, 1884.

S. S.,

Notary Public, ———

County of ———.

S. S.

[Seal.]

No. 526.**Writ of Habeas Corpus.**

The United States of America,

— District of —, ss.

To W. C., Jailer of — County, —:

We command you that the body of L. H., in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before G. W., judge of our district [*or, circuit*] court of the United States, within and for the district aforesaid, to do and receive all and singular those things which the said G. W., judge of our said district [*or, circuit*] court, shall then and there consider of him in this behalf; and have you then and there this writ.

[*Add teste according to the court issuing the writ. See Nos. 30 and 31.*]

No. 527.**Entry—The Finding of the Court.**

[*Caption as in No. 524.*]

On this — day of —, 1894, this cause came on to be heard upon the application of a writ of *habeas corpus* directed to C. J., warden of the — state penitentiary, and after argument on behalf of the petitioner, L. H., by his counsel R. X., Esquire, and by J. H. on behalf of the United States and the warden of the — state penitentiary, and the court being fully advised in the premises, find: [*here set forth the opinion of the judge, if a written opinion is handed down, or the finding by the court, as may be*].

G. W.,

R. X.,

United States District Judge.

Counsel for Petitioner.

J. H.,

United States Attorney.

No. 528.**Entry Ordering Discharge of Prisoner.**

[*Caption same as in No. 524.*]

On this — day of —, 1894, came the parties by their counsel, and this cause coming on to be heard upon the copies of the indictment, journal entry of the supreme court of Oklahoma Territory, attaching that part of the Indian country in said territory to — county for judicial purposes, and of the commitment under which the prisoner is detained by the warden of the — state penitentiary, and the issue of the writ and production in court of the body of said L. H. being waived both by counsel for petitioner and for the United States and, after argument of counsel, and the court being fully advised in the premises, the court finds that said petitioner is unlawfully restrained of his liberty, and it is therefore considered and ordered by the court that said L. H. be discharged from the custody of the said warden, as aforesaid, and that he go hence without day.

It is further ordered, that the United States marshal serve a copy of this order upon the warden of the — state penitentiary.

To which finding and judgment of the court, the United States district attorney excepts, and prays that the exception may be noted.

No. 529.**Appeal to the Circuit Court of Appeals.**

The United States Circuit Court of Appeals for the — Circuit, Term of —, in the year of our Lord one thousand eight hundred and ninety-four.	}	Appeal.
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In re application of L. H. for a writ of *habeas corpus*,
No. —.

The United States, by their attorney, J. H., feeling themselves aggrieved by the order and judgment, entered on the

— day of —, 1894, in the above-entitled proceeding, do hereby appeal from the said order to the circuit court of appeals for the — circuit, and pray that their appeal may be allowed, and that a transcript of the record of proceedings and papers upon which said order is made, duly authenticated, may be sent to the circuit court of appeals of the — judicial circuit of the United States. J. H.,
United States Attorney.

No. 530.

Assignment of Error on Appeal.

The United States Circuit Court of Appeals for the — Circuit, Term of —, in the year of our Lord one thousand eight hundred and ninety-four.	}	Assignment of Error.
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In re application of L. H., for writ of *habeas corpus*.

Afterwards, to wit, on the — day of —, 1894, in this same term, before the honorable judges of the circuit court of appeals for the — circuit, in the city of —, —, come the United States of America, by their attorney, J. H., and say that in the record and proceedings aforesaid, there is manifest error in this, to wit:

The court erred in granting the application for the writ of *habeas corpus*.

The court erred in holding that "the application must be granted for the reason that the sentence was imprisonment at 'hard labor' for five years, and the act under which the prisoner was convicted and sentenced provides for imprisonment not more than fifteen years."

The court erred in holding that the sentence was void.

For other errors appearing upon the record.

Whereas, by the law of the land, the said writ of *habeas corpus* should have been discharged, and the prisoner remanded to the — penitentiary to serve out his sentence.

And the United States pray that the order and judgment aforesaid may be reversed, annulled, and held for naught, and for such other relief as may be proper in the premises.

J. H.,

United States Attorney.

No. 531

Entry Allowing Appeal.

The United States Circuit Court of Appeals for the——Circuit, Term of——, in the year of our Lord one thousand eight hundred and ninety-four.	}	Entry.
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And now, to wit, on the —— day of ——, 1894, it is ordered that the appeal be allowed as prayed for. And it is further ordered that said petitioner, L. H., may, at any time pending said appeal, be enlarged upon executing a recognizance, with sureties in the sum of —— dollars, to the satisfaction of the clerk of this court, for his appearance to answer the judgment of the court of appeals, and upon failure thereof to give bail, to remain in the custody of the warden of the —— penitentiary.

G. W.,

District Judge.

**PROCEEDINGS AGAINST JAILER. (PRISONER
ESCAPED.)****No. 532.****Motion for Rule against Jailer to show Cause, etc.***[Caption.]*

Now comes J. H., attorney for the United States, and informs the court that the defendant, L. H., on the — day of —, 1894, in pursuance of a sentence and judgment of said court was, on a temporary mittimus, delivered to the marshal and committed to the jail of — county, in the state of —, in charge of W. C., to await further order of court; that on the — day of —, 1894, a final commitment was issued to the marshal directing him to execute the sentence of the court and deliver the body of L. H. to the warden of the penitentiary of the state of —, to be imprisoned for the term of — years, and to pay the penalty of —, and on the — day of —, 1894, at 7 o'clock p. m., the marshal demanded such prisoner of W. C., keeper of the county jail, and was informed that said prisoner had escaped.

Wherefore he prays for a rule to issue to the said W. C., jailer of — county, to show cause why he should not be attached for contempt for failure to comply with the order of the court.

J. H.,

United States Attorney,
— District of—.

No. 533.**Granting Motion for Rule, etc.***[Caption.]*

This cause coming on to be heard on the motion for a rule to issue to the keeper of the — county jail by the attorney

for the United States, and the same being submitted, and the court being fully advised, grants the same, and it is ordered that a rule to show cause be issued to W. C., the jailer of — county, returnable for hearing on the — day of —, 1894.

No. 534.

Rule for Jailer to show Cause, etc.

[*Caption.*]

The President of the United States of America to W. C., jailer of — county, state of —:

You are hereby cited and admonished and ordered to appear before our district [*or circuit*] court of the United States within and for the — district of —, on Saturday, the — day of —, 1894, at ten o'clock a. m., to show cause, if any you know or have, why you should not be attached for contempt of court on failure to comply with the order of court to safely keep the said L. H. a prisoner.

It is ordered that the marshal of this district make return of this rule on or before the appearance-day above noted.

[*Add teste according to court issuing the rule. See Nos. 30 and 31.*]

No. 535.

Answer of Jailer to the Rule to show Cause.

The United States, Plaintiffs,	}	Answer.
<i>vs.</i>		
W. C., Defendant.		

Now comes the said W. C., and for answer to the rule issued herein to show cause why he should not be attached for contempt of this honorable court says that L. S. is the sheriff of — county, —, and that by Section 7368 of the Revised Statutes of — it is provided :

“The sheriff, or person acting as such, shall have charge of the jail of the county, and of all persons confined

therein, and the same shall safely keep and by himself or deputy shall at all times attend to the jail and govern and regulate the same according to the rules and regulations prescribed by the court of common pleas."

He further says that the said sheriff of — county duly appointed him, the said W. C., and one C. W., deputies of said county.

That he was assigned as such deputy to be the keeper of the jail of said county, and that the said C. W. was duly appointed by said sheriff as turnkey of the jail of said county. That in the absence of the jailer, and while not on duty as such, the said C. W. acts as jailer, and performs the duties as such, and all of this was true at the time of the alleged escape of said L. H. He further says that the said L. H. was not placed in his charge except as he was by law placed therein when he was committed to said jail. He further says that said L. H. did escape from said jail, but without the knowledge of said respondent and while he, said W. C., was not on duty as such jailer, while he was lawfully off duty, and while he was absent from said county jail on business, and during regular hours of absence as known and authorized by the sheriff of — county. W. C. further says that said escape was without any fault on his part, and that he has not been guilty, or intended to be so, of contempt of this honorable court, nor has he acted in violation of his duty in any particular.

Wherefore, said W. C. asks to be dismissed from the requirements of said rule to show cause why he should not be attached for contempt.

Y. & Y.,

Attorneys for Respondent.

State of —, County of —.

W. C., being duly sworn, says that the facts stated in the foregoing answer are true as he believes.

W. C.

Sworn to before me and assigned in my presence this — day of —, 1894.

J. N.,

[Seal.]

Notary Public in and for — County.

No. 536.**Entry Discharging Jailer.**

[*Caption.*]

On reading and filing the answer of the defendant, W. C., to the rule to show cause why he should not be attached for contempt, filed against him in this cause, and on motion of counsel for said defendant W. C., it is ordered hereby that the rule to show cause why said W. C. should not be attached for contempt in this cause be and the same is hereby discharged at the costs of the United States.

ADMIRALTY.

LIBELS IN REM.

No. 537.

General Form (1).

The District Court of the United States, }
for the — District of —. } In Admiralty.

To the Hon. G. W., Judge of the District Court of the United States in and for the — District of —:

A. B., [*occupation*], of the city of —, state of —, brings this his libel against the ship [*or, brig, tug, or, steamboat, etc.*], [*name of vessel*], whereof C. D. is, or lately was, master, now lying in port at —, in the district aforesaid, her tackle, sails, (2) apparel, furniture, boats, and other appurtenances, and cargo (3), and all persons intervening for their interest in said vessel in a cause of contract, [*or, collision, or, salvage, or, damage, or, possession, or, as may be*], civil and maritime, and the said libellant alleges and propounds as follows: [*here state the allegations of fact in numbered articles, the last article being as follows:*]

—. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore, the libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the

said vessel, her tackle, sails (2), apparel, furniture, boats, and other appurtenances (4), and cargo laden therein (3), and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to decree to the libellant the payment of the said amount due to libellant on his contract [*or whatever the case may require*], aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

X. & X.,

A. B.

Proctors.

R. X.,

Advocate.

[*Verification. See No. 585 et seq.*]

(1) For the necessary allegations in a libel, *in rem* see the 23d Rule in Admiralty; see also cases cited, Desty's Fed. Proc., page 1214.

(2) If the vessel is a steamboat, insert the words "engines, boilers, and machinery."

(3) In a libel against the ship only, omit "and cargo," and also "and cargo laden therein," in the prayer.

(4) See 8th Rule in Admiralty.

No. 538.

Against a Vessel for Repairs (1).

[*Caption, address, and introduction as in No. 537.*]

First. That the said vessel [*name*], of the burden of about — tons, a foreign vessel belonging to the port of —, and for some time past and now lying in the said port of —, and being in need of repairs, the said libellant furnished the necessary materials for said vessel, and all necessary work and labor upon the same to make her sea-worthy, which said materials and work and labor are particularly set forth, to-

gether with the time and date when the said materials were furnished, and the said work and labor done, in the schedule hereto annexed, and made part hereof; and that the said materials furnished, and work and labor done by the libellant amount to — dollars, and that all of said materials furnished, and work and labor done as aforesaid upon said vessel were necessary to and for said vessel, and the said material furnished and the said labor done were on the credit of said vessel.

Second. That the master or owner of said vessel hitherto has refused, and still refuses to pay the same, or any part thereof, although often requested so to do.

Third. [Conclude with the last article, *prayer, etc.*, as in No. 537, inserting in the *prayer* "payment of the amount due aforesaid," *etc.*, and attach, as schedule, an itemized bill for materials and work.]

(1) The pleader will find in this form sufficient guide for a libel *in rem* for supplies furnished. As to where a libel *in rem* lies, see *Brig Nestor*, 1 Sum., 73; also cases cited, *Desty's Fed. Proc.*, 1206.

No. 539.

By a Mariner for Wages (1).

The District Court of the United States, }
for the — District of —. } In Admiralty.

To the Hon. G. W., Judge of the District Court of the United States in and for the — District of — :

A. B. of —, late mariner on board the ship [*or, brig, or, schooner, etc.*] [*name of vessel*], now lying at the port of —, in the district aforesaid, brings this his libel, against said vessel, whereof C. D., is, or lately was, master, her tackle, sails, apparel, furniture, boats, and appurtenances, and all persons intervening for their interests therein, in a cause of subtraction of wages, civil and maritime, and the said libellant alleges and propounds as follows :

First. That on or about the — day of —, 1894, the said vessel —, whereof the said C. D. was then master, being then in the port of —, and destined on a voyage to Liverpool, England, and thence to Rotterdam, Holland, and thence back to the said port of —, he, the said C. D., did ship and hire the libellant to serve as mariner on board the said ship, for and during the said voyage, at the rate of wages of — dollars per month, as per schedule hereto annexed and made part thereof; and accordingly, on or about the — day of —, 1894, the libellant entered on board in the service of said ship in the capacity and at the monthly wages aforesaid, and signed the usual shipping articles, or mariner's contract; which said agreement is now in the possession of the said C. D., and which for greater certainty the libellant prays may be produced here in court.

Second. That the said ship, having taken in a cargo of general merchandise, proceeded on her said voyage with the libellant on board, and arrived at said port of Liverpool, on or about the — day of —, 1894, with said cargo on board, part of which she delivered, and having taken on board other merchandise, proceeded on her voyage to the said port of Rotterdam, Holland, where she arrived on or about the — day of —, and delivered her cargo and made freight. She thereupon immediately loaded a cargo of general merchandise, and proceeded on her homeward-bound voyage to the said port of —, where she arrived on or about the — day of —, 1894, with libellant on board, and was there safely moored, and after the aforesaid voyage was ended, the said libellant was discharged from the service of the said ship without receiving the wages due to him for the said voyage (except the sum of — dollars), though often said libellant has requested payment of the same.

Third. That during the whole time he was in the service of the aforesaid vessel, the libellant faithfully performed his duties on board the said vessel, and is entitled to receive his wages.

Fourth. [Conclude with the last article, prayer, etc., as in Form No. 537, inserting in the prayer "payment of his wages," aforesaid. A schedule should be attached to the libel. See No. 540.]

(1) R. S. Secs. 4546, 4547. See No. 626 *et seq.* for affidavit, preliminary summons, and certificate of officer.

See also 13th Rule in Admiralty.

No. 540.

Schedule to be Attached to Libel for Wages.

Referring to the foregoing libel and forming a part thereof.

The——[*name of vessel*]——Dr.

To A. B.,

Wages from the —— day of ——, 1894, to —— day of ——, 1894, at —— dollars per month. \$——

No. 541.

By a Mariner for Wages Without Written Contract (1).

[Proceed as in No. 539 to the words, "he, the said C. D.," in article first, and continue said article as follows:]

First. —— —— he, the said C. D., did ship and hire the libellant to serve as mariner on board the said ship for and during the said voyage; and accordingly, on or about the —— day of ——, 1894, the libellant entered on board and into the service of the said vessel in the capacity aforesaid.

Second. [The same as article second, No. 539.]

Third. That during the whole time he was in the service of the said vessel, the libellant faithfully performed his duties in the capacity aforesaid, and he thereby became entitled by law to receive the wages of —— dollars per month, as set forth in the schedule hereto annexed and made part hereof, so much or greater wages having been paid to one or

more seamen for the voyage aforesaid, and no shipping articles or mariners' contract having been signed by the libellant.

Fourth. [Conclude as in No. 539, and add schedule No. 540.]

(1) See note to No. 539.

No. 542.

By Mariner for Wages after Ship has Left Port (1).

[If the vessel has left the port where its voyage ended, or is about to leave such port within ten days after delivery of her cargo, process may issue on a libel in rem. without preliminary summons. (R. S. Sec. 4547.) In such cases there should be an additional allegation in a separate article, in Nos. 539 and 541, which may be as follows :]

Fourth. That said vessel has left the port of delivery where the said voyage ended without paying to the libellant the balance of wages due as aforesaid. [Or,

Fourth. That, the said vessel is about to proceed to sea before the end of ten days next, after the delivery of her cargo or ballast [according to the facts of the case.]

(1) For affidavit, see No. 626 *et seq.*

No. 543.

For Wages on Discharge before Beginning Voyage (1).

[Proceed with title, address, introduction, and article first as in No. 539, and continue as follows :]

Second. That the vessel began taking in cargo, and on the — day of —, 1894, before the commencement of her voyage, the libellant was discharged by the said master from the services of the said vessel without his consent and without fault on his part to justify his discharge.

Third. That during the time he was in the service of the said vessel, the said libellant faithfully performed his

duty, and is entitled to receive wages for three days' service, at the rate of — dollars per month aforesaid, to wit, — dollars. He also claims in addition thereto, a sum equal in amount to one month's wages as compensation, to wit, — dollars, amounting in the aggregate to — dollars, which said sum he has demanded of the master, who refused and still refuses to pay the same or any part thereof, and that the same remains wholly unpaid and justly due to said libellant.

Fourth. [Conclude as in No. 539].

(1) R. S. Sec. 4527.

No. 544.

For Wages on a Boat on Navigable Rivers and Lakes.

[Proceed with title, address, and introduction, as in No. 539, and continue as follows:]

First. That the said [name of vessel], at the time when the said services hereinafter mentioned were rendered, was a vessel of — tons burden, and engaged in the business of foreign and domestic commerce, and navigation upon the public and navigable rivers and waters of the United States, and upon waters navigable from the sea, to wit, upon the — river [or, lake], and that said vessel now lies at the port aforesaid in said district, and within the reach of process of this honorable court (1).

Second. That at the dates set forth on the schedule attached and made part hereof, the said vessel, whereof the said C. D. was then master, being at the port of —, the said master, by himself or his agent, did hire and ship the said libellant to serve as common mariner [pilot, cook, etc., or as may be] on board the said vessel, at the rate of wages set forth in full in the schedule before mentioned. That in pursuance thereof, this libellant, on or about the — day of —, 1894, went on board and entered into the service of said master of said vessel, as such mariner [or, etc.], and served for the time and at the rate of wages set forth in said schedule.

Third. That at the time he was discharged from the said vessel the wages earned by him, as aforesaid, were not paid to him, or any part thereof, except what is duly credited in the schedule hereto annexed; and that there is now due to libellant, by reason of his services aforesaid, the sum of — dollars, which the said master, or owner of the said vessel, hitherto has altogether refused and still refuses to pay, although often requested so to do.

Fourth. That during the whole time the said libellant was in the service of the said —, to wit, from the time he went on board thereof, to the time of his leaving the same, he faithfully performed his duties as mariner on board said vessel according to the best of his ability, and was obedient to the lawful commands of the said master and to the other officers of the said vessel, and is entitled to his wages aforesaid.

Fifth. [*Conclude as in No. 539.*]

(1) It is not necessary to plead license, size, or enrollment of vessel. The Act of Feb. 26, 1845, not effective. *The Eagle*, 8 Wall., 15; *Rover*, 33 Fed. Rep., 514; *The General Cass*, 1 Brown Adm., 334.

No. 545.

For Pilotage to Sea (1).

[*Proceed with title, address, and introduction as in No. 537, in "Cause of Pilotage," and continue as follows:*]

First. That on or about the — day of —, 1894, the libellant was a regularly licensed pilot, and the vessel aforesaid being then in the port of —, the said C. D., master thereof, employed the libellant as pilot, to take the said vessel from the said port to sea; accordingly the libellant went on board the said vessel on the day aforesaid, and did safely pilot her to sea, arriving [*here name the point outside the harbor where the pilot left the vessel*], on the morning of the — day of —, 1894.

Second. That the libellant did faithfully perform his duty as pilot of the said vessel, and is entitled to the regular and lawful fees for said services in the sum of — dollars.

Third. That the said master or owner has not paid the said sum, or any part thereof, but has refused, and still refuses to pay the libellant the said sum, although often requested so to do, and the same remains wholly unpaid and due.

Fourth. [*Conclude with last article, prayer, etc., as in No. 539.*]

(1) See 14th Rule in Admiralty.

No. 546.

For Pilotage under State Regulations (1).

[*Proceed with title, address, and introduction as in No. 537, in a "Cause of Pilotage," and continue as follows:*]

First. That on or about the — day of —, 1894, the libellant was a pilot, duly licensed and qualified in accordance with the laws of the state of —, and of the statute of the United States in such case made and provided, to pilot vessels to and from the port of —; that being then on board the pilot boat — upon the high seas, and on waters in the admiralty and maritime jurisdiction of the United States and of this honorable court, to-wit [*here describe the position of the pilot boat, as for e. g. one mile south from — light-house, on the east edge, near the white buoy*], seeing a signal for a pilot from a vessel approaching from the southwest, which proved to be said vessel, the [*name of vessel*], drawing — feet of water, and bound to the port of —, he immediately went on board the said vessel, whereof the said C. D. was then master, and at the request of said master piloted her safely to her anchorage in the port of — afore-said, as directed by said master.

Second. That for the services mentioned in the first article, the libellant is entitled by law to receive of and from the said master or owner of the said vessel,——, the sum of —— dollars. That the said master or said owner has not paid to the libellant said some of money, or any part thereof, although often requested so to do, and the same remains wholly unpaid and due.

[*Conclude with the last article, prayer, etc., as in No. 537.*]

(1) R. S., 4235. See also 14th Rule in Admiralty, and cases cited in Desty's Fed. Proc. under this rule.

No. 547.

For Pilotage in Extraordinary Danger.

[*If the services of the pilot is attended with extraordinary danger, owing to the disabled condition of the vessel or the tempestuous state of the weather, he is entitled to extra compensation, and it should be set forth in a separate article. In such cases, proceed with title, address, and introduction, and article first, as in No. 546, and continue as follows :*]

Second. That owing to the tempestuous state of the weather, [*or, disabled condition of the vessel, as the case may be*], [*here state the special peril, care, or skill required to safely pilot the vessel*].

Third. [*The same as the second article in No. 546.*]

Fourth. That by reason of the extraordinary peril, care, skill, and exertions mentioned in the second article, the libellant reasonably deserves to receive of and from the said master or owner the further sum of —— dollars.

Fifth. That the said master or owner has not paid to the libellant either of the said sums mentioned, or any part thereof, although often requested so to do, and that the same remains wholly unpaid and due.

Sixth. [*Conclude with the last article, prayer, etc., as in No. 537.*]

No. 548.

For Wharfage (1).

[*Proceed with title, address, and introduction as in No. 537, in "A Cause of Wharfage," and continue as follows:*]

First. That the libellant is, and was at the time hereinafter mentioned, the owner of a certain wharf in the port of —.

Second. That the said ship, [*or, brig, schooner, etc., as may be*], — [*name of vessel*], —, of the burden of about — tons, was, at the time hereinafter mentioned, a foreign vessel, belonging to the port of —.

Third. That the said [*name of vessel*], on or about the — day of —, 1894, at the instance and request of the said C. D., then master thereof, was received by the libellant as such wharfinger, and moored at the said wharf where, through the care of the libellant, his agents and servants, she has lain in safety to the present time.

Fourth. That the libellant is informed and believes that the said master is preparing, and intends soon to remove the said vessel from the said wharf, and immediately proceed with her to sea, without the consent of the libellant, and without paying wharfage.

Fifth. That, according to the customary rate of compensation paid for the wharfage of said vessel at the port aforesaid, the libellant is wholly entitled to, by reason of the premises, to demand and have, [*or, that by reason of the premises, the libellant reasonably deserves to have*], for the wharfage of the said —, of and from the said C. D., master as aforesaid, or from the owner of the said vessel, the sum of — dollars.

Sixth. That neither the master of said — [*name of vessel*], nor her owner, has paid to the libellant said sum of money, or any part thereof, but have hitherto wholly neglected so to do, although often requested to pay the same, and the same is now justly due to the libellant.

Seventh. [Conclude with last article, prayer, etc., as in No. 537, inserting in prayer "for wharfage."]

(1) It is not necessary to allege that the vessel was fastened to wharf. The Wm. H. Breirsfield, 39 Fed. Rep. 215.

No. 549.

For the Nonfulfillment of a Contract for Transportation of Goods.

[Proceed with title, address, and introduction, as in No. 537, in "A Cause of Contract," and continue as follows:]

First. That on or about the — day of —, 1894, the said vessel [*name*], whereof the said C. D. was then master, being then in the port of —, and destined on a voyage upon the high seas, and on waters within the admiralty and maritime jurisdiction of the United States and of this honorable court, to wit: from the said port of — to —, the libellant being the owner of fifty bales of cotton, of the value of — dollars, made a contract with the said C. D. as such master, whereby he agreed, in consideration of certain freight, to convey the said cotton from the said port of — to — aforesaid, and there to deliver the same in good order and condition to —, saving and excepting any such loss and damage as might happen by perils on the seas; that the libellant on the same day delivered to the said master the same cotton in good order, and received from him a bill of lading therefor. (1)

Second. That the said ship shortly afterwards started on her voyage, and the said C. D., master as aforesaid, not regarding his duty in that respect, nor his promise and undertaking to convey and deliver the said cotton as aforesaid, did not so convey and deliver the same, although no dangers of the seas prevented him from so doing, but on the contrary thereof, was negligent and careless in conducting himself with respect to the cotton, that by and through the mere carelessness and negligence of the said C. D. and his servants,

the said cotton became and was wholly lost to the libellant [or, that the ship, after leaving port, sprang a leak, whereby the goods were wetted, and thereby damaged, by reason of the vessel not being staunch and tight when she left port, *or as may be*]; by reason whereof the libellant has sustained damage to the amount of two thousand dollars.

Third. [Conclude as in No. 537, alleging in the prayer, "payment of damages aforesaid."]

(1) This clause should be omitted if no bill of lading be given, and the preceding clause should conform to the exception stated in the bill of lading when one is given.

No. 550.

Against Merchandise for Possession.

[*Title and address.*]

A. B. [*occupation*], of the city of —, state of —, brings this, his libel, against fifty barrels of flour, marked J. S., and against C. D., master of the schooner —, in a cause of possession, civil and maritime, and the said libellant alleges and propounds as follows:

First. That on or about the — day of —, 1894, the said vessel was lying at the port of Amsterdam, Holland, and destined thence on a voyage to the port of New York, and that on the day aforesaid L. M., of Amsterdam, shipped on board said vessel, consigned to the libellant, fifty barrels of flour marked J. S., and the said master, C. D., signed the usual bill of lading for the same, whereby he agreed to deliver said flour to the libellant at New York upon payment of the freight for the same at the rate of — dollars per barrel, a copy of which bill of lading is hereto attached.

Second. That on or about the — day of —, 1894, the said vessel had arrived at the port of New York, and the libellant on that day paid to the said master the freight due upon said flour, to wit, the sum of — dollars, and demanded the delivery thereof, the said master refused to de-

liver the same to the libellant unless the libellant would pay — dollars as an average contribution; this sum the libellant refused to pay because he was not and is not liable therefor and not bound to pay the same; the said master still refuses to deliver to him the said merchandise, of value of more than — dollars, to the great damage of the libellant.

Third. That the said fifty barrels of flour are now in the city of —, and within reach of process of this honorable court.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore the libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said fifty barrels of flour, and that the said C. D. may be cited to appear and answer all and singular the matters aforesaid, and that it will please this honorable court to decree that the said flour may be delivered to the libellant, and that the said C. D. may be condemned to pay to the libellant the damages sustained by him, together with his reasonable costs and expenses, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

A. B.

X. & X.,

Proctors.

R. X.,

Advocate.

[*Verification. See No. 585 et seq.*]

No. 551.

By a Part Owner against his Partner for Security for the Safe Return of the Vessel.

[*Proceed with title, address, and introduction, as in No. 537, as far as the words "and appurtenances," and continue as fol-*

lows:] and also against E. F. of —, and all other persons intervening for their interests therein, in a cause of possession, civil and maritime, and the said libellant alleges and propounds as follows :

First. That the said brig [*or as may be*] is a maritime vessel of about — tons burden, and the libellant is the true and lawful owner of three-sevenths parts [*or as may be*] of the said —, —, and the said E. F. is the owner of the remaining four-sevenths parts thereof.

Second. That the aforesaid E. F., being in possession of the said vessel, and assuming and exercising his power of employing her according to his will and pleasure, declares it to be his intention, and is preparing to send the said brig [*or as may be*] on a voyage to —, under the charge of the aforesaid C. D., who has been constituted master for the said voyage by the said E. F. without consultation with the libellant.

Third. That the libellant disapproves of the said contemplated voyage, and of the appointment of the said C. D. as such master, and he has repeatedly informed the said E. F. of his objections thereto. That the said libellant is willing, and has repeatedly offered and proposed to the said E. F. to send the said brig at their joint expense and risk on some other shorter or less hazardous voyage [*or as may be*], to be mutually agreed upon between the said E. F. and the libellant, and under the charge of some other more competent and trustworthy master, to be by them jointly appointed [*or if the libellant desires to send the vessel on some particular voyage, the fact should be so stated*]; but that the said E. F. utterly refuses to accede to the wishes of the libellant in this behalf, and persists in his aforesaid design, against the will and expostulations of the libellant.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and this honorable court.

Wherefore the libellant prays that a warrant of arrest may issue against the said brig, [*name*] her boats, tackle, apparel,

and furniture, and also process of monition, commanding the marshal to cite and admonish the aforesaid E. F., part owner of the said brig as aforesaid, and the aforesaid C. D., master as aforesaid, and all other persons in general who have or pretend to have any right, title, or interest therein, to appear before this honorable court, on the — day of —, or on such day to be inserted in the said process as the court shall for that purpose direct, then and there to answer the libellant in the premises, and especially to show cause, if any they have, why the said brig [*name*] should not be detained in custody, and not allowed to depart from the aforesaid port of —, until good and sufficient security be given to the libellant to the extent of his aforesaid interest therein; and if no sufficient cause to the contrary be shown, that this honorable court will pronounce accordingly, and will decree the said brig to remain under arrest until such security shall be given as aforesaid, and for such other and further relief and redress as to right and justice appertain, and the court is competent to give in the premises. A. B.

X. & Y.,

Proctors.

R. X.,

Advocate.

[*Verification. See No. 585 et seq.*]

No. 552.

For Salvage.

[*Title and address.*]

A. B., of —, owner, and C. D., of —, master, of the ship [*or, brig, or, schooner, as may be*], hereinafter mentioned, as well as also for the several persons composing the crew of the said vessel, as for themselves, viz. [*here insert the names and capacity of the crew, as E. F., seaman, G. H., cook, etc.,*], bring this, their libel, against the ship [*or as may be*], now lying in the port of —, in the district afore-

said, whereof J. K. is, or lately was, master, her tackle, sails, apparel, furniture, boats, and appurtenances, and cargo laden on board the said vessel at the time when the salvage services hereinafter mentioned were rendered, and against all persons intervening for their interests therein, in a cause of salvage, civil and maritime, and the said libellants allege and propound as follows:

First. That on or about the — day of —, 1894, the aforesaid vessel —, of — tons burden, whereof the said A. B. was then owner, (1) and the said C. D. was master, and having a crew of — men besides the said master, sailed from the port of —, with a valuable cargo of salt, on a voyage to Rio Janeiro, Brazil.

Second. That while proceeding on her voyage at about — o'clock on the — day of —, 1894, the said vessel — being at sea, at about — miles from Old Point Comfort, Virginia, with the wind blowing hard and a heavy sea running, the firing of guns was heard from a vessel in the distance, and to the windward a ship [*or as may be*] was seen, and thereupon orders were given on board the said — to bear down to the said —, which was immediately done, and, after much difficulty, the said — approached the said —, which proved to be the — from Havana, Cuba, of — tons burden, of the value of — dollars, bound for New York, with a valuable cargo of sugar of the value of about — dollars, and navigated by the master, the mate, and — seamen.

Fourth. That the said vessel was in a leaky and almost sinking state, having about — feet of water in her hold, and the water fast gaining on her, and her crew totally exhausted from their incessant work at the pumps.

Fifth. That the mate and four of the crew of the said — went on board the said — at the risk of their lives, and a consultation was held between the said J. K., master of the said —, and the said C. D., master of the said —. It was then determined by them, on account of the wind and

other circumstances, to run for the port of Old Point Comfort, distance about — miles, as aforesaid, and the mate and four of the crew of the said — should remain on board the said — and work at the pumps and otherwise assist in the navigation of the said —, which was accordingly done, and the two vessels proceeded in company for Old Point Comfort, a light being put in the rigging for the guidance of the — during the night.

Fifth. That the pilot came on board the said [*disabled vessel*] about — o'clock on the — day of —, 1894, and about — o'clock on the same [*or, following, as may be*] day, the said — was safely moored in the harbor of Old Point Comfort.

Sixth. That but for the assistance so rendered by the said —, the — cargo and crew would most probably have been lost, inasmuch as the crew could not, from their exhausted state, have kept her much longer afloat, nor have brought her into port.

Seventh. That the said libellants, by reason of the perils necessarily incurred, and the great importance and nature of the services rendered by them in saving the — and her cargo, reasonably deserve to have, and therefore claim, a commensurate reward for salvage therefor.

Eighth. That all and singular the premises are true, and within admiralty and maritime jurisdiction of the United States and this honorable court.

Therefore the libellants pray that process, in due form of law, according to the course of the courts of admiralty and this honorable court, in a cause of admiralty and maritime jurisdiction, may issue against the —, her tackle, sails, apparel, furniture, boats, and appurtenances, and against the cargo aforesaid, and that all persons having, or pretending to have, any right, title, or interest in the said vessel, and the cargo, may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court would be pleased to decree such a sum, or proportion, of the value

of the said — and her cargo, to be due to the libellants as a compensation of the said salvage services as shall seem to the court meet, together with their expenses in this behalf, and such other further relief, or distress, as the court may be competent to give in the premises.

X. & X.,

Proctors.

R. X.,

Advocate.

A. B., Owner.

C. D., Mate.

E. F., Seaman.

Etc.

[*Verification. See No. 585 et seq.*]

(1) This allegation is necessary in some districts, at least. The Cherokee, 30 Fed. Rep., 640.

No. 553.

On a Bottomry Bond against the Vessel, Freight, and Cargo (1).

[*Title and address.*]

A. B., of Liverpool, England, [*occupation*], brings this libel against the ship, [*or, brig, etc.*], [*name of vessel*], whereof C. D. is or was lately master, now lying in the port of —, in the district aforesaid, her tackle, sails, apparel, furniture, boats, and appurtenances, and against freight earned by the said vessel in the voyage hereinafter mentioned, and the cargo hereinafter mentioned, now [*or, lately*] laden on board the said vessel, and all persons intervening for their interests in the said ship, in a cause of bottomry, civil or maritime, and the said libellant alleges and propounds as follows:

First. That on or about the — day of —, 1893, while the said vessel was on a voyage from Amsterdam, Holland, to the port of —, she encountered a severe gale, which so injured her that she was obliged to change her course and put into the port of Liverpool, England, for repairs, supplies, and necessities to enable her to complete her voyage aforesaid.

Second. That the said master being in want of the funds necessary for this purpose, amounting to the sum of —

dollars, and having no other means of procuring the same, he, the said C. D., master as aforesaid, borrowed the said sum of — dollars of the libellant on bottomry, at the rate of — per cent. premium on the voyage aforesaid, which said sum was by the libellant accordingly advanced to the said C. D. for the purpose aforesaid.

Third. That in consideration of the said advance, he, the said C. D., as master, did, by a certain bond, or instrument of bottomry and hypothecation, a copy of which is hereto annexed and made part hereof, and bearing date of the — day of —, 1893, by him duly executed in the presence of two creditable witnesses, who respectively subscribed their names thereto as witnesses to the due execution thereof, bind the said vessel, her tackle, sails, apparel, furniture, boats, and appurtenances, and also the freight which should become due for the aforesaid voyage, and also the cargo on board the said vessel, for the payment of the aforesaid sum of — dollars, together with the aforesaid premium thereof, amounting in the whole to the sum of — dollars, at or before the expiration of five days after the arrival of the said vessel at her mooring in the port of —.

Fourth. That the said sum of — dollars was so advanced and paid by the said A. B. upon the credit of the said vessel, as well as upon the credit of the said master thereof personally, for the purpose aforesaid, and was necessary therefor, inasmuch as the said vessel could not have sailed from Liverpool if the sum had not been advanced and paid as aforesaid.

Fifth. That the said vessel, having, by the means of the said loan, been fitted for sea, proceeded with a cargo on board, consisting of —, to —, aforesaid, where she arrived in safety, on or about the — day of —, 1893.

Sixth. That the aforesaid sum of — dollars has not, or any part thereof, been paid to the libellant, nor to any person authorized to receive same in his behalf, though the said C. D. has often been requested to pay same.

Seventh. [Conclude with the last article, prayer, etc., as in No. 537, and attach bond.]

(1) This form may be used for a libel against vessel alone, or vessel and freight, by omitting the clauses referring to cargo and freight, as the case may be.

No. 554.

For Damages by Collision.

[Proceed with the title, address, and introduction, as in No. 537, in "*A Cause of Collision*," and continue as follows:]

First. That the libellant, at the time of the happening of the damage and injury hereinafter mentioned, was, and still is, the owner of the schooner Edith, of about — tons burden.

Second. That on or about the — day of —, 1893, the said schooner, being tight, staunch, and well manned and provided, sailed from the port of Philadelphia, in the state of Pennsylvania, with a valuable cargo of flour, on a voyage to the port of New Orleans, in the state of Louisiana.

Third. That during the said voyage, to wit, about 11 p. m., on the — day of —, 1893, the said schooner being then about ten miles easterly from Old Point Comfort, Virginia, with the wind blowing hard from east-southeast, and the said schooner being close hauled on her starboard tack, her course lying east-southeast, E. F., the first mate of the said schooner, who then had the watch, and was the commanding officer on deck, being on the lookout, saw lights ahead, and soon after discovered they were borne by a steamboat approaching the schooner in a northwesterly direction, apparently about one mile distant, and then bearing about one point on her lee bow; then as soon as the said E. F., mate as aforesaid, had discovered the approach of the said steamboat, he informed the helmsman of the said schooner thereof, and ordered him to keep her steady, believing that the said steamboat would pass her on the larboard hand. That about three minutes after the said order was given it became apparent to the said

mate that there was ground to apprehend a collision with the said steamboat; and within one or two minutes thereafter he became satisfied that such collision was inevitable unless proper means were immediately resorted to by the persons having charge of the said steamboat to prevent the threatened disaster. Whereupon, the said steamboat having in the meantime approached within speaking distance, the said E. F., mate, as aforesaid, instantly shouted, "Port your helm; stop your engine," and several times repeated this request, and continued to do so, in a loud and audible voice, until, about a minute and a half after first hailing the said steamboat, she struck the said schooner, stem on, on her larboard bow, and so greatly injured the said schooner that she immediately began to fill with water, and, in spite of the most strenuous exertions on the part of all on board to keep her afloat she soon thereafter sunk, and was, with her cargo, totally lost, her officers and crew having with difficulty saved their lives by getting on board the said steamboat.

Fourth. That the said steamboat by which the damage had been done proved to be the Pluto, aforesaid, under the command of G. H., as master thereof, and being of about — tons burden, bound on a voyage from Pensacola, Florida, to New York. That at the time when the lights were first discovered from the Edith, as hereinbefore mentioned, the Edith carried a light suspended from the outer end of her bowsprit, which remained there until she was struck by the Pluto, and although there was considerable haze on the water, the said light could have been easily seen, and if she kept a good lookout, must have been seen by her at the distance of half a mile, or at least of a quarter of a mile, and in season to have enabled her to have given way for the said Edith, as she was bound to do, and thereby to prevent a collision therewith.

Fifth. That if at the time the said Pluto was first hailed from the Edith, and thenceforth, she had had a proper watch on deck, the warning given by the mate of the Edith, as hereinbefore mentioned, must have been distinctly heard

on board the Pluto, in season to have enabled her, by putting her helm to port, to pass the Edith in safety; or by immediately stopping her engine, greatly to diminish the violence of the blow. But instead of so doing, the said steamboat Pluto kept on her previous course; and although she was running at the rate of twelve knots an hour, her speed was not slackened; and the aforesaid G. H., master of the said Pluto, admitted to the aforesaid E. F., mate of the Edith, soon after the said E. F. got on board the Pluto, that her engine had not been stopped.

Sixth. That at the time when the danger of a collision between the said vessels was first perceived, as aforesaid, from the Edith, it was impossible for her to get out of the way of the said Pluto; nor were there any means to which she could with propriety have resorted for that purpose.

Seventh. That the said schooner was of the value of — dollars, and the said cargo was of the value of — dollars, or thereabouts; and that by reason of the careless, negligent, and unskillful and improper management of the said steamboat Pluto, and of the collision thereby occasioned of the said steamboat with the said schooner Edith, the libellant has sustained damages to the amount of — dollars, or thereabouts, for which he claims reparation in this suit.

Eighth. That, all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore the libellant prays that process in due form of law may issue against the said steamboat, her engine, machinery, boats, tackle, apparel, and furniture; and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and the court is competent to give in the premises.

X. & X.,

A. B.

Proctors.

R. X.,

Advocate.

[*Verification. See No. 585 et seq.*]

No. 555.**Insurers for Loss by Collision.**

[*Title, address, and introduction, as in Form 537, and continue as follows:*]

First. At all times hereinafter mentioned the libellants were underwriters, and lawfully engaged in and transacting the business of marine insurance in London, England.

Second. On or about the — day of —, 1894, the firm of R. & Co., merchants, of the city of —, shipped, in good order and condition, on board the steamer X., then lying in the port of —, and bound to the port of —, to be transported in said steamer to said port of —, — tubs of butter, — of which were marked "A", — of which were marked "B," and — of which were marked "C," and which tubs of butter the agents of said steamer X. did agree to transport to and deliver at — by the said steamer X., to the order of the shipper, and at the time aforesaid did issue a bill of lading in accordance with such agreement. Said goods were shipped by R. & Co., for joint account with G. & Co., of —, and were owned by the said R. & Co. and the said G. & Co. jointly, and after said shipment, the bill of lading issued as aforesaid therefor was duly indorsed by said R. & Co., and delivered to said G. & Co.

Third. On or about the — day of —, 1894, the firm of M. & S., merchants, of the city of —, shipped in good order and condition on board the steamer X., to be transported in said steamer from the port of — to the port of —, — boxes of cheese, — of which were marked (F) 17, — of which were marked (F) 18, and — of which were marked (F) 19, and which boxes of cheese the agents of said steamer did agree to transport to and deliver at —, to the order of the shippers, and at the time aforesaid did issue a bill of lading in accordance with such agreement. Said goods were shipped by said M. & S. for account of the firm of G. & Co., of —, who were and continued to be the owners of said goods, and after said shipment said bill of lading

issued as aforesaid therefor was duly indorsed by M. & S. and delivered to said G. & Co.

Fourth. On or about the — day of —, 1894, the said steamer X. set sail from the port of —, bound for the port of —, having on board both the aforesaid lots of merchandise, which had been shipped on board said steamer at said port of —, in good order and condition, and at about half-past one o'clock in the afternoon of the — day of —, 1894, the said steamer X., when about — miles east of —, came into violent collision with said steamer Y., and by said collision a large hole was made in the starboard side of the steamer X., by reason whereof the compartments in which the above-mentioned lots of merchandise were stowed were flooded, and the said lots of merchandise were wholly lost to the owners, most of them being lost through said hole to the sea, and the others being jettisoned.

Fifth. On or about the — day of —, 1894, the libellants, in the regular course of their business as marine insurers, issued to D. & W., for and in consideration of the premiums paid, an open policy of insurance in the sum of — pounds, British sterling, bearing date of the — day of —, 1894, and in and by said policy of insurance the libellants agreed to insure said D. & W. as well in their own name and names of every other person or persons to whom the same did, might or should appertain in part or in whole, and did cause them and each of such persons to be insured at and from — and (or) — and (or) — and (or) — to — and (or) port or ports, place or places, on the west coast of Great Britain, upon any kind of goods and merchandise against loss or damage arising from adventures and perils of the sea, and all other perils, loss, and misfortunes that might come to the hurt, detriment, or damage of said goods upon the voyage; that, by the terms of said policy of insurance, the libellants, A. B. and S. B., each became insurer in the sum of — pounds British sterling, of said — pounds British sterling, which was the total sum covered by said policy, and the other libellants each became insurer to the extent of —

pounds British sterling, and the libellants agreed to become insurers in such proportions upon any shipment declared under the said policy of insurance; that thereafter, and in the month of —, 1894, D. & W. declared insurance upon said lot of — tubs of butter to the amount of — pounds of British sterling, for the benefit of the owners of the said tubs of butter, and they further declared insurance upon said lot of — boxes of cheese in the sum of — pounds British sterling, for the benefit of the owners of said boxes of cheese, and the said insurance was accepted and indorsed by and for the libellants upon said policy, said sums insured being only equal or less than the true value of said goods.

Sixth. The aforesaid collision occurred as follows: The X., up to within a very short time before the collision, was proceeding on an easterly course at the rate of — miles an hour, which speed she maintained until the collision; and the said steamer Y., up to within a very short time before the collision, was proceeding on a west by north course, bound from — to —, at a high rate of speed; the sea was smooth, and there was little wind, but there was a dense fog, in which the said steamers had been running for a long time before the collision; neither vessels had sufficient lookouts; both vessels were giving at intervals signals with their steam whistles. While so proceeding, the officers of the steamer Y. heard the fog signal of the X. over the port bow of their vessel, and gave orders to the man at the wheel to port, which order was executed; and the officers of the X. heard the fog signal of the steamer Y. over the starboard bow of their vessel, and gave orders to the man at the wheel to starboard, which order was executed. A few minutes later each steamer became visible to those on board of the other steamer, close at hand; whereupon those in charge of the steamer Y. ordered her engines to be stopped and reversed, but before any perceptible influence was exerted on the speed of the steamer the two vessels came into collision.

Seventh. The collision was due to the fault and negligence of those in charge of the steamers X. and Y., respec-

tively, in that they were proceeding at too high a rate of speed, in that they had no good and sufficient lookouts; in that they did not give the proper signals by which to indicate each to the other their respective courses and movements; in that they did not heed and note the signals given by the approaching vessel; and in that they did not stop and reverse their engines before the collision and at such time as to overcome their headway; and to the fault of those in charge of the navigation of the steamer Y., in that they ported their helm and did not hold their course, and to the fault of those in charge of the navigation of said steamer X., in that they starboarded their helm instead of porting; and the said collision was not in any respect due to the fault of the libellants.

Eighth. By reason of the premises and the collision aforesaid, and the resultant loss and destruction of said lots of merchandise, the libellants, as insurers, as aforesaid, became liable to pay, and have paid on or about the — day of —, 1894, to the said G. & Co., for the loss, as aforesaid, for said — tubs of butter, the sum of — pounds British sterling, and for the loss and destruction of said — boxes of cheese, as aforesaid, the further sum of — pounds British sterling, and have become subrogated to all the rights of the owners of said merchandise, and that they have received the sum of — pounds British sterling, being allowances in general average for goods jettisoned.

Ninth. By reason of the premises and the payment aforesaid, the libellants have sustained damages in the sum of — pounds British sterling, equivalent in money of the United States to — dollars, with interest thereon from the — day of —, 1894, no part of which has been paid, although payment thereof has been duly demanded by the libellants.

Tenth. Said steamers X. and Y. are now within this district and within the jurisdiction of this court.

Eleventh. [*Conclude with the last article, prayer, etc., as in No. 537.*]

LIBELS IN PERSONAM AND IN REM AND PERSONAM.

No. 556.

Libel in Personam.

The District Court of the United States }
for the — District of —. } In Admiralty.

To the Hon. G. W., Judge of the District Court of the
United States in and for the — District of —:

A. B., [*occupation*], of the city of —, state of —, brings
this, his libel, against L. M., [*occupation*], of the city of —,
owner of the ship [*or, schooner, etc.*] —, whereof the said
C. D. is, or lately was, master, [*or, against C. D., now, or lately,*
master, etc., or as may be], in a cause of contract [*or as may*
be], civil and maritime, and the said libellant alleges and
propounds as follows:

*[Here state the allegations of fact in numbered articles, the
last article being as follows:]*

That all and singular the premises are true, and within
the admiralty and maritime jurisdiction of the United States,
and this honorable court.

Wherefore the libellant prays that a warrant of arrest (1),
in due form of law, according to the course of this honorable
court in cases of admiralty and maritime jurisdiction, may
issue against the said L. M., and that he may be cited to
appear and answer all and singular the matters aforesaid,
and that this honorable court would be pleased to decree to
the libellant the said amount due to libellant on his contract
[*or whatever the case may require*] aforesaid, with interest and

costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

X. & X.,

A. B.

Proctors.

R. X.,

Advocate.

[*Verification. See No. 585 et seq.*]

(1) See 2d Rule in Admiralty.

No. 557.

Same, with Prayer for Attachment of Goods, etc.

[*Proceed as in No. 556, to the prayer, and continue as follows:*]

Wherefore the libellant prays that a warrant of arrest (1), in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may be issued against the said L. M., and that he may be cited to appear and answer all and singular the matters aforesaid, and that if he can not be found, then that his goods and chattels in this district may be attached to sufficient amount to answer the libellant, and if sufficient goods and chattels can not be found in this district, then that his credits and effects in the hands of O. P., merchant [*or as may be*], of —, may be attached to a sufficient amount to answer the libellant, and that the said O. P. may be cited to appear and answer such interrogatories as may be propounded to him by the libellant, and that this honorable court would be pleased to decree to the libellant all the said amount due to the libellant on his contract [*or whatever the case may require*] aforesaid, with interest and costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

[*Sign, etc., as in No. 556.*]

(1) A simple monition in the nature of a summons, instead of a warrant of arrest, may issue. See 2d Rule in Admiralty.

No. 558.**Same, with Prayer for a Monition.**

[*Proceed as in No. 556, to the prayer, and continue as follows:*]

Wherefore the libellant prays that process of monition (1), in due form of law according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said L. M., and that he may be cited to appear before this honorable court on the — day of —, or such other day, to be inserted in the said monition, as the court shall direct, then and there to answer the libellant in the premises, and that this honorable court would be pleased to decree to the libellant the payment of the said amount due to libellant on his contract [*or whatever the case may require*] aforesaid, with interest and costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

[*Sign, etc., as in No. 556.*]

(1) See 2d Rule in Admiralty.

No. 559.**Interrogatory Clause in Prayer.**

[*If the libellant puts interrogatories (1), they should be added after the verification, and entitled "Interrogatories Referred to in the Foregoing Libel," and a clause should be added at the end of the prayer as follows:*]

"And further, that the said L. M., or other person or persons, intervening for his or their interests, may be required to answer the interrogatories hereto annexed."

(1) See 23d Rule in Admiralty.

No. 560.**For Compensation by a Superintendent for the Building of a Ship.**

[Proceed with title, address, and introduction, as in No. 556, omitting "whereof the said C. D. is, or lately was, master," and continue as follows:]

First. That on or about the — day of —, 1894, the said libellant was employed by L. M., of the city of —, to purchase materials, employ mechanics, and direct and superintend the building of a certain schooner in the city of —, the funds to be furnished and payments made by the said L. M., for the salary or wages of — dollars, for the time between the laying of the keel and the launching of the said ship.

Second. That the libellant immediately began his duties under said contract, and proceeded without delay to perform his duties; and the keel of said vessel was laid on the — day of —, 1894, and the work has proceeded with all practical dispatch, and the said vessel would have been ready to be launched on the first day of —, 1894, had the necessary funds been supplied to make the necessary payments and complete the work.

Third. That the said vessel is still unfinished, and has not yet received a name, and is intended to be of about — tons burden.

Fourth. That on or about the — day of —, 1894, the said L. M. sold the said unfinished vessel to one O. P., of the city of —, subject to the payments of the libellant, and thereafter refused to furnish funds to make the necessary payments, and the said O. P. declines to proceed with the construction of the said vessel, and discharged the libellant.

Fifth. That there is due, and wholly unpaid, the whole of his said compensation, amounting to — dollars, besides interest.

Sixth. *[Proceed with the last article, prayer, etc., as in No. 556, or 557, or 558, according to the relief desired.]*

No. 561.**For Supplies (1).**

[*Proceed with title, address, and introduction, as in No. 556, and continue as follows:*]

First. That on or about the — day of —, 1894, the said vessel —, then lying at the port of —, and owned by the said L. M., was a maritime vessel employed in navigating the high seas, and standing in need of provisions and stores, the libellant, at the request of C. D., the master, furnished to and for the said vessel the provisions and stores contained in the schedule hereto annexed, amounting to the sum of — dollars, and that the same were furnished at the prices stated in the said schedule, which said prices are reasonable.

Second. That the said provisions and stores were necessary to enable the said vessel to perform her intended voyage or voyages, and were furnished on the credit of the said vessel, as well as of the master and owner thereof.

Third. That the said owner or master has not paid to the libellant the said sum of — dollars, or any part thereof, although often requested so to do, and the same remains wholly unpaid and due, together with interest thereon, amounting to — dollars, amounting in the aggregate to — dollars, which is now justly due and owing to the libellant. [*Conclude as in No. 556.*]

(1) See brig Nestor, 1 Sam. 73; and Desty's Fed. Proc., 1206, and cases cited.

No. 562.**For Supplies with Attachment Clause.**

[*Proceed as in No. 561, inserting as article 4th the following:*]

Fourth. That the libellant is informed and believes that the respondent has credits and effects in the hands of O. P., of the city of —.

Fifth. [*Conclude as in No. 557, and attach schedule.*]

No. 563.**Against Owner for Wages.**

[Proceed with title, address, and introduction, as in No. 556, and continue with statement of facts. The pleader will find in No. 539 sufficient guide in this respect.]

[Conclude as in No. 556, or 557, or 558, according to the relief desired, and attach schedule, for form of which see No. 540.]

No. 564.**Against a Consignee for Freight on a Bill of Lading.**

[Title and address.]

A. B., [occupation], of the city of —, owner of the brig [or, etc.,] her tackle, apparel, and furniture, brings this his libel against L. M., [occupation], of the city of —, in a cause of contract, civil and maritime, and said libellant alleges and propounds as follows:

First. That at the time hereinafter mentioned the libellant was, and still is, the owner of the brig —, and that C. D. was then the master thereof.

Second. That the said brig, about the middle of the month of October, 1893, was lying in the port of —, and destined on a voyage thence to the port of —; G. H. then shipped on board the said vessel — barrels of flour, the contents and weight thereof being unknown, to be therein carried from the said port of — to the said port of —, and there to be delivered in like good order, as they were received, the dangers of the seas only excepted, to the respondent, L. M., or to his assigns, the freight for the same, at the rate of — dollars per barrel, to be paid by the said L. M., or his assigns, and accordingly the said C. D., master, at the port of —, on the — day of October, 1893, affirmed to the usual bills of lading, and delivered the same to the shippers, all the said cargo, a copy of which bills of lading is hereto annexed, marked schedule "A."

Third. That the said vessel, with the said cargo on board, soon after set sail from —, and in due time safely arrived at the port of —, her destination, and the said flour was duly delivered to the said L. M., and so accepted and received by him.

Fourth. That by reason of the premises, the said L. M. became bound to pay to the libellant the freight for the said merchandise, amounting to the sum of — dollars, and is more particularly set forth in the schedule hereto annexed, and marked schedule "B."

Fifth. That the said L. M. has refused, and still refuses, to pay the freight aforesaid, although often requested so to do, notwithstanding he has accepted and received the said merchandise, and that in like good order and condition, as it was shipped; the said sum of — dollars, with interest, is now due the libellant for the freight on said merchandise, and is wholly unpaid.

Sixth. [Conclude as in No. 556, or 557, or 558, according to the relief desired, and attach bill of lading, marked schedule "A," also bill for freight, marked schedule "B."]

No. 565.

For Wharfage.

[Proceed with title, address, and introduction, as in No. 556, and continue with articles 1, 2, 3, 4, 5, and 6, as in No. 538, and in place of "a foreign vessel," insert "a domestic vessel, owned and commanded by the said —, of —."]

[Conclude as in No. 556, or 557, or 558, according to the relief desired.]

No. 566.**For Lockage in a Public Navigable River (1).**

[Proceed with title, address, and introduction, as in No 556, and continue as follows:]

First. That the libellant is, or was at the time hereinafter mentioned, the owner of certain locks in and upon the — canal and waterway connecting with and necessary to the continuous navigation of the — river, and that he is entitled by law to charge and receive certain tolls for vessels and their tows, passing through and using the said locks.

Second. That the said L. M. is, and was at the time hereinafter mentioned, the owner of the steam tug —, belonging to and licensed and enrolled at the port of —, and that C. D. was then master of the said steam tug.

Third. That the said steam tug, with certain barges in tow, passed through and used the locks of said libellant, on her voyages during the months of — and —, 1893, in the navigation of the said canal and river, and that there is due from said steam tug and tow, for such use of the said locks, the amount of — dollars; the times, rates of toll, and other particulars are set forth in a schedule hereto annexed, and made part hereof, and marked schedule "A."

Fourth. That, according to the custom, it was the duty of the said owner or master of the said steam tug to pay tolls both for herself and for the barges which she had in tow, and that the charges made for the said tolls are reasonable and proper, and the use of the said locks was necessary to the navigation of the river and canal by the said tug and her tows, in the prosecution of her business.

Fifth. That the owner or master of the said vessel has hitherto wholly refused and still refuses to pay the aforesaid sum of — dollars, or any part thereof, although often requested so to do.

Sixth. *[Conclude with the last article, prayer, etc., as in No. 556, or 557, or 558, according to the relief desired.]*

(1) See the "Bob Connell," 1 Fed. Rep., 218.

No. 567.

Against a Master for Assault, and Beating, or Imprisonment.

[*Title and address.*]

A. B., of —, late mariner on board the ship [*or, etc.*] —, whereof C. D., of —, is, or lately was, master, brings this his libel against the said C. D., in a cause of damage, civil and maritime, and the said libellant alleges and propounds as follows:

First. That on or about the — day of —, at the port of —, the said ship —, whereof the said C. D. was master, then being at the port of —, and destined on a voyage from the said port of — to —, and thence back to the port of —, the libellant shipped to serve as a mariner on board the said ship during the said voyage; that the said ship soon thereafter proceeded upon the said voyage with the libellant on board, and in due time completed the same; and that during the whole of the said voyage the libellant did well and truly perform his duty on board the said ship as such mariner, and was obedient to all the lawful commands of the said master and other officers on board the said ship.

Second. That during the said voyage, to wit, on or about the — day of —, the libellant having the day before been accidentally hit by the jib-sheet block on his right arm, which became thereby so severely hurt and lamed as almost wholly to deprive him of the use thereof, insomuch that he could not move his arm at all without excruciating pain, the said C. D. well knowing that the libellant had received the aforesaid injury, and had thereby become disabled as aforesaid, ordered the libellant to go aloft and assist in shortening the sail; the libellant respectfully told the said C. D. that it was impossible for him to obey the said order; whereupon the said C. D. immediately knocked the libellant down by a violent blow with his clenched fist upon the head of the libellant, and with great force and violence kicked him several times, and once upon his arm while he lay upon the deck, whereby he was greatly hurt and bruised.

Third. That afterwards, during the said voyage, to wit, on or about the — day of —, [*here allege any other assault or beating, or any imprisonment, which may have been inflicted by the defendant upon the libellant, and of which he sees fit to complain; and if more than two injuries of this nature have been so inflicted, they may also severally be alleged in separate successive articles.*]

Fourth. That by reason of the wanton cruelty and unlawful violence to which the libellant has been subjected by the said C. D., as hereinbefore alleged and set forth, the libellant has suffered great pain and distress [*and if the fact be so, then add, and his health was thereby greatly impaired, or, was and still is thereby greatly impaired*], and he has been damaged to the amount of — dollars.

Fifth. [*Conclude with last article, prayer, etc., as in Nos. 556, or 557, or 558, according to the relief desired, inserting in the prayer "for the damages aforesaid," etc.*]

No. 568.

To Enforce Decree of Court of Admiralty of another District.

[*Proceed with title, address, and introduction, as in No. 556, in "A Cause of Contract and Judgment and Decree," and continue as follows:*]

First. That on or about the — day of —, 1893, the said libellant filed his libel in the district court of the United States for the — district of —, against the said L. M., to recover the sum of — dollars for necessary supplies furnished by the said libellant to the said vessel, owned by the said L. M., while lying in the port of —, and issue was joined in the said cause, and the case coming on to be heard upon the pleadings and proofs, it was decreed by the said district court for the — district of — that the said L. M. pay to the libellant the sum of — dollars with interest

from the — day of —, and costs, a certified copy of which decree is hereto annexed and made part hereof, and marked exhibit "A."

Second. That the said decree still remains in full force and effect, and has not been modified, vacated, annulled, appealed from, or satisfied in whole or in part.

Third. That the said sum of — dollars, decreed as aforesaid, together with interest thereon from the — day of —, and the costs therein taxed at — dollars, amounting in all to the sum of — dollars, has not been paid, nor any part thereof, and still remains due and unpaid.

Fourth. That the said L. M. can not be found within the jurisdiction of the said district court of the United States for the — district of —, nor can any goods, chattels, rights, credits, effects, lands, or tenements be found within the jurisdiction of the said court out of which to satisfy the said decree, or any part thereof.

Fifth. [*Conclude with last article, prayer, etc., as in Nos. 556, or 557, or 558, according to the relief desired.*]

No. 569.

General Form of Libel in Rem and Personam (1).

The District Court of the United States, }
for the — District of —. } In Admiralty.

To the Hon. G. W., Judge of the District Court of the United States in and for the — District of —:

A. B., [*occupation*], of the city of —, state of —, brings this his libel against the ship [brig, tug, etc.] [*name of vessel*], whereof C. D. is or lately was master, now lying in port at —, in the district aforesaid, her tackle, sails, apparel, furniture, boats, and appurtenances, and against L. M., [*occupation*], of —, owner [*or, the said C. D., master*] of said vessel, and all persons intervening for their interest in said vessel, in a cause of contract [*or, as may be*], civil and maritime, and the said libellant alleges and propounds as follows:

[*Proceed as in No. 537, and in the prayer, in place of the words "and cargo laden therein," insert "the said L. M."*]

(1) Libels *in rem* and *personam* can be joined only in the cases specified in the Admiralty Rules. *Aleda*, 12 Fed. Rep., 343. But see *City of Carlisle*, 39 Fed. Rep., 897. The forms given for libels *in rem* will furnish the necessary allegation for libels *in rem* and *personam* in particular cases.

No. 570.

Intervening Libel (1).

The District Court of the United States, }
for the — District of —. } In Admiralty.

To the Hon. G. W., Judge of the District Court of the United States in and for the — District of —:

A. B., [*occupation*], of the city of —, state of —, brings this his intervening libel against the ship [*or, etc.*], whereof C. D. is or lately was master, her tackle, sails, apparel, furniture, boats, and appurtenances, and against all persons lawfully intervening for their interest therein, in a cause of contract [*or as may be*] civil and maritime, and the said libellant alleges and propounds as follows:

First. That the said vessel is now at the port of —, in the district aforesaid, and is in the custody of the marshal of the United States for the — district of —, and is held upon process issued out of this honorable court at the suit of —, number —, which said action is still pending.

Second. [*Proceed with the allegations of fact in the numbered articles as in "Libels in Rem," and conclude with the following prayer:*]

Wherefore the said libellant prays that he may be permitted to intervene according to the course and practice of the courts of admiralty and maritime jurisdiction, against the said [*here state the style and name of the vessel*], her tackle, sails, apparel, furniture, boats, and appurtenances, and prosecute same jointly with the said [*libellant in original suit*],

and that all persons having or pretending to have any right, title, or interest, may be cited to appear and answer all and singular the matters hereinbefore set forth, and that this honorable court will be pleased to decree the payment of the amount aforesaid, and also to condemn and sell the said vessel, her tackle, sails, apparel, furniture, boats, and other appurtenances, to pay the same, with costs, and for such other relief as may be proper in the premises. A. B.

X. & Y.,

Proctors.

R. X.,

Advocate.

[*Verification. See No. 585 et seq.*]

(1) See 34th Rule in Admiralty.

No. 571.

General Form for Libel of Information (1).

The District Court of the United States }
for the — District of —. } In Admiralty.

To the Hon. G. W., Judge of the District Court of the United States in and for the — District of —:

J. H., attorney of the United States for the — district of —, who prosecutes for the said United States in this behalf, and being present here in court in his own proper person, in name of and on the behalf of the United States brings this libel of information against the steamboat [*etc., as may be*], her tackle, engines, boilers, machinery, sails, apparel, furniture, boats, and other appurtenances, in a cause of seizure [*or as may be*], and alleges and informs as follows:

[*Here state the grounds for the libel of information (2), and continue as follows:*]

That all and singular the premises aforesaid are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the said attorney of the United States, on behalf of the United States, prays the usual process and monition against the said steamboat, her tackle, engines, boilers, machinery, sails, apparel, furniture, boats, and other appurtenances, in this behalf to be made, and that all persons interested therein may be cited to appear and answer the premises, and that this honorable court may be pleased to decree for the penalty aforesaid, and that the said vessel may be condemned and sold to pay the penalty aforesaid, with costs, and for such other and further relief as shall to law and justice appertain.

J. H.,

United States Attorney for the
— District of —.

(1) No bond or stipulation is necessary. Foster's Fed. Prac., page 852. The Antelope, 12 Wheat, 546.

(2) What facts need be alleged in a libel of information, see 22d Rule in Admiralty, and cases cited in Desty's Fed. Proc., page 1213; also, The Scotia, 39 Fed. Rep., 429.

No. 572.

Petition for Limitation of Liability.

To the Honorable G. W., Judge of the District Court of the United States for the — District of —:

The libel and petition of the T. Steamship Co., owner of the steamship D., in a cause of action, civil and maritime, respectfully shows:

First. Your petitioner is a corporation duly created and organized by and under the laws of the kingdom of —, having its principal office at —, and owns and runs a line of steamships for the carriage of cargo and passengers between — ports and the port of —, known as the T. line. At the times hereinafter mentioned your petitioner was the owner of said steamship D., which was engaged in the business of carriage of cargo and passengers in said line as aforesaid.

Second. On the — day of —, 1894, said steamship D., having on board a large general cargo and about — passengers, and being fully manned with a large and competent crew, under command of an experienced master, with a full corps of efficient officers, left the port of —, bound on a voyage to —, via the ports of — and —. After touching at said ports, and taking on more passengers and cargo and ship's coals, said steamship left — for —, on the — day of —, 1894, passing — on the —, and through — on the following day, whence all went well with said vessel until the — day of —, when a storm came up, and for two days the vessel labored heavily in the seas. On the morning of the — the high seas were continued, and finally at — o'clock p. m., when in latitude 46 28, and longitude 40 6, a shock was felt throughout the ship. The engines were stopped instantly, and, upon investigation, it was found that the stern section of the propeller shaft had broken in the stern tube, and that at the same time the stern bulkhead was broken into and rivets started, letting in a large quantity of water. All the pumps were worked, the sails set. The pumps were kept going, but were unable to keep the water under control. The pumps were worked by steam, and the other compartments of the vessel kept empty, but the water continued to rise in the engine-room. A portion of the cargo was jettisoned without avail. The water in the after hold rose to a depth of three feet. The sea was still high. The storm continued, and the steamer labored heavily, and began noticeably to settle aft.

Third. At daylight, on the — day of —, the steamship M. was sighted. She promptly offered assistance. Her commander undertook to tow the D. to the nearest land, which was —. The M. accordingly began towing. The leak in the D. increased so rapidly that at — o'clock a. m. her passengers were begun to be transferred to the M., which was concluded at 4 p. m. The captain of the M. then declined to tow the D. longer, after the passengers had been

transferred ; and, as the leak was increasing, the captain and crew of the D. were compelled, for their own safety, to abandon the vessel, which was done ; and thereafter said vessel, together with all her tackle, apparel, boats, and appurtenances, has become a total loss, and no freight moneys have been earned, paid, or received therefrom.

Said accident happened, and the loss, damage, and injury and destruction above set forth were occasioned, done, and incurred without fault, or privity, or knowledge of your petitioner, and without fault of any of its officers, agents, or servants, but were due solely to the perils of the sea.

Fourth. Nevertheless, certain persons, claiming to have been passengers on said vessel, and persons claiming to have lost passengers' luggage or baggage upon the D., have already brought suit against your petitioner, and other suits are threatened. On the — day of —, 1894, one X. Y. commenced an action against your petitioner in the supreme court of the state of —, for the city and county of —, within the — district of —, to recover damages for alleged loss or destruction of luggage upon said steamship ; and said action is still pending, the plaintiff's attorney being R. X., Esq., whose office is at —, in the city of —. Your petitioner desires to contest its liability for the loss, destruction, damage, and injury occasioned by said accident, and also to claim the benefit of the limitation of liability provided in the third and fourth sections of the act of congress entitled "An act to limit the liability of ship-owners, and for other purposes," passed March 3, 1851, now embodied in Sections 4283 and 4285 of the Revised Statutes of the United States, and the various statutes in addition thereto and amendatory thereof [and is ready and willing to transfer any interest, or *spes recuperandi*, in the steamship D., for the benefit of all such claimants to a trustee to be appointed by this honorable court, although, as this petitioner is advised and believes, said steamship D., and her freight moneys, and her tackle and apparel, are now, and have been, a total loss.

Or, in case of an appraisal say, "And to that end desires an appraisal to be had of the amount or value of its interest in said steamship in the condition in which she was after said accident and damage on —, 1894, and of her freight then pending; and for that purpose your petitioner asks that said steamship be examined, and her value ascertained, by a commissioner of the circuit court, or by such other means as the court shall direct].

Fifth. Your petitioner further states the facts and circumstances by reason of which exception from liability is claimed as follows, in addition to the facts hereinbefore alleged:

That said steamship D. was in all respects sound, staunch, and seaworthy, and properly manned and equipped, and provided for the voyage in which she was engaged, and under the command of proper and suitable officers.

That said accident occurred through no fault or negligence on the part of the persons on board of or having charge of the navigation of the said steamship D., but was wholly due to the perils of the seas, the severity of the storm, and the action of the elements in breaking the shaft of said steamer within the stern tube, whereby the stern bulkhead was broken and started, and a leak was made so that it became impossible to repair her, which finally caused her to be abandoned by her passengers, officers, and crew.

That said steamship D. has not been libeled or arrested in any court to answer for said loss or destruction, but that the owners have been sued within the — district of — as aforesaid.

That your petitioner is ignorant of the amount of the losses and injuries suffered by the several freighters and owners of merchandise upon said voyage.

Wherefore your petitioner prays that this honorable court [*in case of appraisal, say:* "will be pleased to cause due appraisal to be had of the value of said steamship D. in the condition in which she was immediately after said accident, and now is, and upon the ascertainment of said

value make an order for the payment thereof into court, or for the giving of a stipulation, with sureties for the payment thereof into court whenever the same shall be ordered, and "] will issue a monition against all persons claiming damages for loss, destruction, damage, or injury occasioned by said accident, citing them to appear before this court and make due proof of their respective claims, at a time to be herein named; as to all which claims your petitioner will contest its liability, independently of the limitation of liability claimed under act and statute aforesaid.

Also, that the court will designate a commissioner before whom proof of all claims presented in pursuance of such monition shall be made, and that, upon the coming in of the report of said commissioner, and upon the hearing of the cause, if it shall appear that the petitioner is not liable for such loss, damage, destruction, and injury, it may so finally be decreed by this court. And that in the meantime, and until the final judgment of the court shall be rendered herein, this court will make an order restraining the further prosecution of all and any suit or suits against the petitioner, in respect to any such claim or claims, particularly by the said X. Y., who brought suit in the supreme court of the state of —, as hereinbefore specified; and the petitioner will ever pray.

The T. Steamship Co.,

R. X.,

by X. & X.,

Advocate.

Proctors.

[*Verification.* See No. 586.]

No. 573.

Petition to bring in Vessel under Rule 59 (1).

To the Honorable G. W., Judge of the District Court of the United States for the — District of —:

The petition of J. S., sole owner of the ship —, against the steam tug —, her engines, etc., and against all persons claiming any interest therein, in a cause of collision, civil and maritime, alleges as follows:

First. The petitioner was, at the times hereinafter mentioned and is now, the sole owner of the ship —, which is a British vessel hailing from —, England, of — tons register, and was, up to the time of the collision hereinafter mentioned, tight, staunch, and strong, and in every way seaworthy.

Second. [*Set forth facts of the collision between the ship —, in tow of tug and a dredge at anchor.*]

Third. Said collision was not caused or contributed to by any negligence on the part of the petitioner or of those in charge of said ship, but was caused by the negligence of the steam tug —, in the following respects among others: [*Here faults are specified.*]

Fourth. On or about the — day of —, 1894, R. M. filed a libel and commenced a suit in this court against said ship —, her tackle, etc., only, for damages alleged to be sustained by steam dredge by the collision aforesaid, in the sum of — dollars, and on or about the — day of —, 1894, the petitioner duly filed in said cause a claim to said ship —, her tackle, etc., with the stipulation for costs required by the rules and practice of this court, and also a stipulation in the sum of — dollars, the agreed value of said ship. Your petitioner has not filed his answer to said libel, the process not having yet been returned.

And your petitioner alleges that said steam tug —, her engines, etc., ought to be proceeded against for said damages in the same suit as said ship.

Fifth. Said steam tug — is now within this district and within the jurisdiction of this court.

Sixth. All and singular the premises are true, and within the jurisdiction of the United States and of this honorable court.

Wherefore your petitioner prays that process may issue according to the practice of this court and the rules of the supreme court in admiralty against the steam tug —, her engines, etc., to the end that the said tug may be proceeded against in this suit for the damage alleged to have been sus-

tained by the libellant, R. M., as if said tug had been originally proceeded against herein. And the petitioner further prays that all persons claiming any interest in said tug — may be cited to appear and answer the libel herein and this petition, and that said tug — may be condemned and sold to satisfy the claim of the libellant for damages, if any, with interest and costs, and also the costs of petitioner herein, and that the petitioner may have such other and further relief as may be proper. J. S.

X. & X.,

Proctors.

[*Verification. See No. 585 et seq.*]

(1) See 59th Admiralty Rule and Desty's Fed. Proc., page 1234, and cases cited.

No. 574.

Petition against Proceeds in the Registry.

The District Court of the United States, }
for the — District of —. } In Admiralty.

To the Hon. G. W., Judge of the District Court of the United States in and for the — District of —:

A. B., of —, brings this his petition and therein alleges and propounds as follows:

[*Here state in distinct articles, as in a libel, the grounds on which the suit is based, and continue with last article as follows:*]

That the [*here state the property in question*] has been sold in pursuance of a decree of the district court of the United States for the — district of —, in behalf of E. F., in a cause of contract [*or, etc., as may be*], civil and maritime, and the proceeds of said sale have been paid into the registry of the court, and there remains [*or, will remain*] from such proceeds after satisfying the decree of said court, as by the records and proceedings of the said court will more fully appear, the sum of — dollars.

Wherefore the said petitioner prays that this honorable court will pronounce for his aforesaid demand, and will direct

the same to be paid out of the aforesaid proceeds, so remaining in the registry of the court as aforesaid, with costs, and for such other and further relief as in right and justice he may be entitled to receive.

A. B.

X. & Y.,

Proctors.

R. X.,

Advocate.

[*Verification. See No. 585 et seq.*]

(1) See 34th Rule in Admiralty, and Benedict's Admr., Sec. 561.

No. 575.

Petition against Proceeds in the Registry against the Claimant (1).

[*If the claimant for the proceeds has appeared, the petition may be the same as in No. 574, and the prayer should be as follows:]*

Wherefore the petitioner prays that process of monition in due form of law, according to the course of this honorable court, in cases of admiralty and maritime jurisdiction, may issue against the said R. S., of —, who appeared and was duly admitted as claimant in the said case, and that he may be cited to appear before this honorable court, on the — day of —, or on such other day, to be inserted in the said process, as the court shall direct, to show cause, if any he may have, why the aforesaid demand of the petitioner should not be allowed and ordered to be paid out of the said proceeds so remaining in the court as aforesaid; and that this honorable court will pronounce for the petitioner's demand, and direct the same to be paid, with costs, and for such other and further relief as in right and justice he may be entitled to receive.

X. & Y.,

A. B.

Proctors.

R. X.,

Advocate.

[*Verification. See No. 585 et seq.*]

(1) See 34th Rule in Admiralty.

ANSWERS, CLAIMS, EXCEPTIONS, AND VERIFICATIONS.

No. 576.

General Form of Answer (1).

The District Court of the United States
for the — District of —.

A. B. <i>vs.</i> The Ship —.	}	In Admiralty.
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To the Hon. G. W., Judge of the District Court of the United States in and for the — District of —:

The answer of L. M., owner of the ship —, to the libel of A. B., against the said ship —, in a cause of contract [*or, etc.*], civil and maritime, and said respondent alleges and propounds as follows:

First. He admits that the allegations of articles one and two of the libel herein are true.

Second. This respondent has no knowledge as to the matters contained in articles three and four of the said libel, and requires proof of the same.

Third. He admits that the allegations in article five of the said libel are true.

Fourth. [*Here state new matter of defense or modification of the allegation of facts set forth in the libel, etc.*]

Fifth. That all and singular the premises are true.

Wherefore the respondent prays that this honorable court will pronounce against the demand of the libellant in his libel before mentioned, with costs.

A. B.

X. & Y.,

Proctors.

R. X.,

Advocate.

[*Verification. See No. 585 et seq.*]

(1) See 27th and 48th Rules in Admiralty. Interrogatories may be added at the end of the answer. See 32d Rule in Admiralty.

No. 577.**Answer to a Libel in Personam.**

[Proceed with title and address, as in No. 576, and continue as follows:]

The answer of C. D., the respondent, to the libel of A. B., libellant, the said respondent alleges and propounds as follows:

[Here set forth the matters of defense in numbered articles, and conclude as in No. 576.]

No. 578.**Claim and Answer.**

[Caption and address.]

And now C. D., of —, intervening for his interest in the ship —, appears before this honorable court, and for answer to the libel and complaint of T. B., of —, against the said ship, and against all persons lawfully intervening for their interest therein, alleges and articulately propounds as follows:

First. That the respondent is now the owner of the said ship —, and also was the owner of the same during the time the said T. B. belonged thereto, and that the said T. B. was duly hired to serve on board the said ship for the voyage, as in the first article in said libel is propounded; the articles of agreement for which voyage, signed by the said T. B., the respondent does herewith produce in court, according to the prayer in the said first article.

Second. That the said ship —, having taken on board a cargo of divers goods and merchandise for the voyage, proceeded therewith for the port of —, in —, and there safely arrived and delivered her cargo and made freight, as in the third article in the said libel is propounded.

Third. That whilst the said ship — was at the port of —, the said T. B., etc. *[here state the bad conduct of the*

libellant, amounting to mutiny or desertion, or other ground of forfeiture of wages, and such other matters showing that the shipping articles were substantially broken, and also any other matters calculated to support and establish the defense].

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; in verification whereof, if denied, the respondent prays leave to refer to depositions and other proofs, to be by him exhibited in this cause.

Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellant in costs, and otherwise right and justice to administer in the premises. C. D.

Y. & Y.,

Proctors.

[*Verification.*]

No. 579.

Answer by an Agent, or Consignee, with Claim Interposed.

The District Court of the United States
for the — District of — .

A. B.	}	In Admiralty.
<i>vs.</i>		
The Ship —.		

To the Hon. G. W., Judge of the District Court of the United States in and for the — District of —:

The answer of E. F., agent of L. M., the owner [*or*, of E. F., the consignee], a claimant of the ship [*or, etc.*], to the libel of A. B. against the said ship, in a cause of collision [*or, etc.*], civil and maritime, and the respondent sheweth as follows:

First. That the said L. M. is the true and *bona fide* owner (1) of the said ship, and that no other person is the owner thereof, and that the said E. F. is duly authorized by the said L. M. to put in a claim in behalf of the said ship in this suit.

Second. [Here state the facts of the defense and claim in numbered articles, concluding with the last article, prayer, etc., as in No. 576.]

(1) See 26th, 27th, and 48th Rules in Admiralty.

No. 580.

Answer and Cross Libel.

[Proceed with title and address as in No. 576, and continue as follows:]

The answer of L. M., [describing him], owner of the ship — [or as may be], to the libel of A. B., of —, master of the brig — [or as may be], in a cause of collision [or as may be], civil and maritime, and also by way of cross libel at the suit of said respondent against the said brig —, her tackle, sails, apparel, furniture, boats, and other appurtenances, and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, and the said respondent sheweth as follows:

First. That the said brig — is now in the port of —, within the — district of —.

Second. [Here make answer to the allegations of the libel as in the immediately preceding forms, and set forth the facts on which the respondent's claim is based, and the damages asked in numbered articles, and conclude as follows:]

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

Wherefore said respondent and libellant prays that this honorable court will pronounce against the demands of the libellant in the original libel before mentioned, with costs, and he further prays [continue as in No. 537, to ask for relief on the cross libel].

No. 581.**Claim of Owner.**[*Title and address.*]

L. M., owner of the said vessel, her boats, tackle, apparel, and furniture, intervening for his interest in the said property, appears before this honorable court and claims the said property and states that the said L. M. is the true and *bona fide* owner (1) thereof, and that no other person or persons are the owners thereof.

And, thereupon, the said claimant prays that this honorable court will be pleased to decree a restitution of the aforesaid property to him, and otherwise right and justice to administer in the premises.

L. M.

Sworn to and subscribed before me this — day of —,
1894.

J. N.,

[*Seal.*]

Notary Public.

(1) See 26th, 27th, and 48th Rules in Admiralty.

No. 582.

**Claim by the United States Attorney on behalf of the
United States for Forfeiture and for Duties in a case
of Salvage of a Foreign Ship and Cargo.**

[*Caption.*]

To the Honorable G. W., Judge of the District Court of the
United States for the — District of —:

The claim of J. H., district attorney of the United States of America for the — district of —, intervening for the interest of the said United States in the said ship called —, and her cargo, and the answer of the said attorney on behalf of the said United States to the libel of the said A. B. and S. B., alleges as follows:

First. That the said J. H., district attorney of the United States of America for the — district of —, claims the said ship —, together with the cargo of said ship laden on

board of her, as stated and set forth in the said libel, as forfeited to the use of the United States, for the cause following, to wit, that the said ship — is a ship or vessel owned wholly or in part by a subject or subjects of her Britannic Majesty, and said ship or vessel, after the — day of —, one thousand eight hundred and ninety-four, did come and arrive from a port or place in a colony or territory of Her Britannic Majesty, to wit, from the port of —, in the island of —, in the —, which said port is, and was at the time the said ship sailed from thence, by the ordinary laws of navigation and trade, closed against vessels owned by citizens of the United States, and that the ports of the United States were closed against the said ship or vessel called the —, which said ship or vessel, being so excluded from the ports of the United States, did enter the same, to wit, the port of —, in the — district of —, aforesaid, in violation of the acts of congress of the United States in such case made and provided. By force and virtue of the acts in such case made and provided, the said ship or vessel, her tackle, apparel, and furniture, together with the cargo on board of the said ship or vessel, became and are forfeited to the use of the United States.

Second. That if this honorable court shall adjudge and decree that the said ship or vessel, with her cargo or either, is not forfeited to the use of the United States, for the cause aforesaid, the said ship or vessel, together with the cargo on board of her, is liable to the payment of the duties imposed by the laws of the United States, and on the importation of the cargo of merchandise on board of her, to wit, rum and sugar of the growth, produce, and manufacture of some foreign country, and which are subject to the payment of duties to the United States on being brought or imported into the United States; wherefore the said attorney, on behalf of the said United States, prays this honorable court to decree the payment of the said duties to the United States according to law, if the said ship and the cargo on board of her, as afore-

said, shall be adjudged not to be forfeited to the use of the United States for the cause aforesaid, and that he may have his costs, etc. And the said attorney further insists upon and submits to this honorable court the rights and interest of the said United States of America in the premises, whatever they may be, to be decreed to them. J. H.,

United States Attorney.

No. 583.

Exceptions to a Libel.

The District Court of the United States
for the — District of —.

A. B.
vs. } In Admiralty.
The Ship —.

To the Hon. G. W., Judge of the District Court of the United States in and for the — District of —.

L. M., respondent [*or, claimant, or as may be*], excepts to the libel of A. B.

First. Because the allegations thereof do not disclose any damages to said libellant.

Second. Because the allegations thereof do not disclose any admiralty and maritime claim or lien upon the said vessel whereupon the judgment should be founded.

Third. [*Set forth other exceptions in like manner, and conclude as follows:*]

In all which particulars the said libel is imperfect and insufficient, and therefore the said respondent is not bound to answer the same, and he prays that the said libel may be dismissed with costs.

R. X.,

Proctor for Respondent.

Dated at —.

No. 584.**Preemptory Exception to a Libel.**[*Caption.*]

L. M., respondent, excepts to the libel of A. B. filed against him in this court, and alleges that on the — day of —, 1894, said libellant, in consideration of — dollars to him paid, released the said defendant from the cause of action set forth in the cause of libel, and therefore he is not bound to answer the same.

Wherefore he prays that this libel may be dismissed with costs.

L. M.

R. X.,

Proctor.

Subscribed and sworn to before me this — day of —.

[*Seal.*]

J. N.,

[*Official character.*]**No. 585.****Oath to Libel or Answer.**

The United States of America,

— District of —, ss.

On this — day of —, 1894, before me, at —, personally appeared the within-named A. B., and made oath that he had read the foregoing libel [*or, answer*], and knows the contents thereof, and that the same is true as to his own knowledge, except as to those matters and things stated to be on his information and belief, and as to those matters and things he believes them to be true.

A. B.

Subscribed and sworn to on the day last above mentioned, before me.

J. H.,

[*Seal.*]

United States Commissioner
in and for the —
District of —.

No. 586.**Oath by Corporation.**

The United States of America,

— District of —, ss.

On this — day of —, 1893, before me, at —, personally appeared the within-named A. B., and made oath that he is president of the A. B. Co., the libellant in the above-named libel, and that the seal affixed to the said libel is the corporate seal of the said company, and was affixed thereto by authority of the said company; the affiant signed the said libel as such president by like authority; that he has read the said libel and knows the contents thereof and the matters stated therein as of his own knowledge are true, and as to the matters stated upon the information of others he believes to be true.

A. B.

Subscribed, etc. [*as in No. 584*].

No. 587.**Oath of Agent or Attorney in Fact.**

The United States of America,

— District of —, ss.

On this — day of —, 1893, before me, at —, personally appeared the within-named R. X., and made oath that he is the attorney in fact for the libellant [*or, the authorized agent of the libellant, or, respondent, as the case may be*], who resides in — (1), and that the facts set forth in the libel are just and true according to the best of his knowledge, information, and belief.

R. X.

Subscribed, etc. [*as in No. 584*].

(1) If the libellant or respondent is a resident of the district, he should make the oath, unless absent at a distance; then this fact should be stated.

No. 588.**Oath by Proctor.**

The United States of America,

—— District of ——, ss.

On this —— day of ——, 1893, before me, at ——, personally appeared the within-named R. X., and made oath that he is the proctor for the libellant in the foregoing libel ; that the said libellant, as affiant is informed and believes, is at present in France, Europe, and that he is specially instructed by the libellant as to the truth as to the matters stated in the foregoing libel, and that affiant has read the said libel and knows the contents thereof, and that the matters stated therein are true to the best of his knowledge, information, and belief.

R. X.

Subscribed, etc. [*as in No. 584*].

STIPULATIONS AND WRITS.

No. 589.

Stipulation for Costs by Libellant in a Suit in Rem (1).

The District Court of the United States
for the — District of —.

On the — day of —, in the year of our Lord eighteen hundred and ninety-four, before me, S. T., Clerk of the said Court [*or, United States Commissioner, or as may be*].

A. B.	}	In Admiralty.
<i>vs.</i>		
The Ship —,		

In a cause of contract [*or as may be*], civil and maritime, moved and prosecuted in said court.

Which day personally appeared the above-named A. B., and produced for sureties G. H., [*occupation*], of —, and J. K., [*occupation*], of —, and the said A. B., G. H., and J. K., submitting themselves to the jurisdiction of the court, bound themselves there, their executors and administrators, unto the said L.M., the claimant of the aforesaid ship, [*when the stipulation is made before the claimant has appeared, say, "For the benefit of whomsoever it may concern"*] in the sum of \$250.00 [*or whatever sum is required by the rule or usage of the court*], that the said A. B. shall prosecute his action in this behalf, and pay all costs and expenses which shall be awarded against the said A. B. in said cause by the final decree of the said court, or upon appeal of the appellate court, and unless he shall do so they hereby severally consent that execution shall issue forth against them, their executors and adminis-

trators, goods, chattels, lands, and tenements, wheresoever the same may be found, to the value of the sum above mentioned.

A. B. (3).

G. H.

J. K.

The same day taken and acknowledged before me (2).

[Seal.]

B. R.,

Clerk of the District Court of the
United States for the —
District of —.

(1) In regard to when a stipulation is required, see Rules 3, 4, 5, 6, 10, 11, 25, 26, 34, 35, and 59, in Admiralty; in Rules 3, 4, 5, and 6, suits *in personam*, a bond or stipulation is mentioned.

(2) Before whom acknowledgments may be made. See 5th and 35th Rules in Admiralty. For an exception to these rules, see R. S., Sec. 941.

(3) Stipulations ought not to be sealed; and possibly bonds. In Marriott's Formulary (272), after "Form of Bail Bond," there is this note, "The bond is not to be sealed."

No. 590.

Justification of Sureties.

The United States of America,
— District of —, ss.

G. H. and J. K., the sureties above named, each for himself solemnly swears that after paying his just debts and liabilities he is worth — dollars in real estate and personal property within the jurisdiction of said court and subject to execution and levy.

G. H.

J. K.

Subscribed and sworn to before me on the day aforesaid.

[Seal.]

B. R.,

Clerk of the District Court of the
United States for the —
District of —.

No. 591.**Stipulation for Costs by Libellant in Personam.**

Form No. 589 will furnish sufficient guide for a stipulation for costs by libellant in an action *in personam*, and No. 590 for justification of sureties.

No. 592.**Stipulation for Costs by Claimant (1).**

[*Proceed as in No. 589 to the words "prosecuted in said court," and continue as follows:*]

Which day personally appeared L. M., of —, as claimant of the said ship —, and produced for sureties G. H. and J. K., and the said L. M., G. H., and J. K., submitting themselves to the jurisdiction of the said court, bound themselves, their heirs, executors, and administrators unto the said A. B. in the sum of two hundred and fifty dollars to pay all costs and expenses which shall be awarded against the said L. M. in said cause, by the final decree of the said court, or, upon appeal, of the appellate court; and unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, where-soever the same may be found.

L. M.

G. H.

J. K.

Same day taken and acknowledged before me.

[*Seal.*]

S. L.,

United States Commissioner.

[*Add justification of sureties. See No. 590.*]

(1) See 26th Rule in Admiralty.

No. 593.**Stipulation by Defendant on Arrest in an Action in Personam (1).**

[*Proceed as in No. 589 to the words "executors and administrators," and proceed as follows:*] unto the said A. B., in the sum of [*here insert the sum stated in the warrant*], that the said L. M. shall appear in the said suit and abide all orders of the said court, interlocutory and final, in the said cause, and to pay the money awarded by the final decree therein in said court or in any appellate court; unless he shall so do, they hereby severally consent that execution shall issue against them, their executors, and administrators, goods and chattels, wheresoever the same may be found to the value of the sum above mentioned.

[*Acknowledgment and justification of surety, as in Nos. 589 and 590.*]

(1) See 3d Rule in Admiralty.

No. 594.**Stipulation for the Safe Return of a Ship.**

At a District Court of the United States of America, held at —, within and for the District of —, on the — day of —, 1894.

A. B., owner of three eighths part of the ship [*or, etc.*] —, against the said ship, and against R. S., the master thereof, and C. D., the owner of the remaining five eighths part thereof.

Which day personally appeared the above-named C. D., and produced for sureties E. F., of —, and G. H., of —, —. And the said C. D., E. F., and G. H., submitting themselves to the jurisdiction of this court, bound themselves, their heirs, executors, and administrators, in the sum of —, being double the appraised value of three eighth parts of the said vessel, unto the above-named A. B., owner of the said three

eighths part of the said vessel, for the return of the said vessel to the port of —, being the port to which the same belongs, or else to pay to the said A. B. the value of his said shares; and unless they shall so do, they hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, where-soever the same shall be found, to the value of the sum aforesaid.

C. D.

E. F.

G. H.

[*Add acknowledgment and justification of sureties. See Nos. 589 and 590.*]

No. 595.

Cost Bond by Libellant in Personam (1).

Know all men by these presents that we, A. B., of —, as principal, and G. H., of —, and J. K., of —, as sureties, are held and firmly bound to L. M. in the sum of \$250.00 [*or whatever amount is required by the rule of the said court*], to be paid to the said L. M. his executors or assigns; to the payment whereof we bind ourselves, our heirs, executors, and administrators jointly, severally, and firmly by these presents.

Dated on this — day of —, 1894.

Whereas the above named A. B. has commenced an action [*or, is about to file his libel*] in the district court of the United States for the — district of —, against L. M. in a cause of contract [*or as may be*], civil and maritime; and now, therefore, the condition of this obligation is such, that if the said A. B. shall prosecute as aforesaid and abide all orders interlocutory and final of the aforesaid court and pay all costs and expenses, if such shall be awarded against him by the final decree of the aforesaid court or any appellate court, then this obligation will be void, otherwise it shall remain in full force and virtue.

A. B.

G. H.

J. K.

[*Add justification of surety. See No. 590.*] (2).

(1) The above will furnish a sufficient guide for bonds in other cases under the Admiralty rules. This form of security in suits *in rem* is not favored, to say the least, in the Rules in Admiralty. See No. 589, note 1; Conkling's Admiralty, p. 104, *et seq.*

(2) See notes 2 and 3 to No. 589.

No. 596.

Stipulation for Release of Vessel (1).

[*Proceed as in No. 589, to the words, "prosecuted in said court," and continue as follows:*]

Which day personally appeared L. M., of —, as claimant of the said vessel, and produced for surety G. H., of —, and J. K., of —, the said L. M., G. H., and J. K. submitting themselves to the jurisdiction of the said court, bound themselves, their heirs, executors, and administrators in the sum of — [*double the amount sued for*] unto the said A. B.; that the said L. M. shall abide and answer the decree of the said court in the aforesaid cause, and unless he shall so do, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, and administrators, goods and chattels, lands and tenements, wheresoever the same may be found for the value of the sum above mentioned.

L. M.

G. H.

J. K.

The same taken and acknowledged before me.

[*Seal.*]

J. N.,

United States Commissioner.

I approve of the sufficiency of the sureties to the within stipulation [*or, bond*].

Dated this — day of —, 1894.

J. S.,

Judge [*or, Collector of Port*] (1).

(1) One surety is probably sufficient, and the Judge, or Collector of Port, should certify to the sufficiency of the surety, or sureties.

See R. S., Sec. 941; Conkling's Admiralty, page 575, and Benedict's Admiralty, Sec. 499, *et seq.*

No. 597.**Warrant of Restitution.**

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal of the — District of —, Greeting:

Whereas, in a certain cause moved and prosecuted in the district court of the United States for the — district of — on behalf of A. B. against the ship —, a claim has been interposed by L. M., and a stipulation filed by him for the restitution of the said vessel now in your custody under the writ of attachment heretofore issued in said cause.

You are therefore by these presents authorized and empowered to relinquish the said vessel [*naming it*] from such attachment, and to deliver the possession thereof to the said claimant upon his paying you in hand the sum of your actual expenses incurred in the custody and care of the same.

Hereof fail not, and of this writ make due return.

[*Add teste. See No. 30.*]

No. 598.**Monition and Attachment.**

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal of said District, Greeting:

Whereas a libel has been filed in the district court of the United States for the — district of —, on the — day of —, in the year of our Lord one thousand eight hundred and eighty —, by A. B., to recover the sum of — dollars in a cause of contract [*or as may be*], civil and maritime, for the reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in said [*name*

of vessel] may be sighted in general and special to answer the premises and, due proceedings being had, that the [*name of vessel*] may, for the causes in said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are hereby commanded to attach the said [*name of vessel*], and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the — district of —, on the — Tuesday of —, 1894, at ten o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and make their allegations in that behalf.

And what you shall have done in the premises do you then and there make return thereof, together with this writ.

[*Add teste. See No. 30.*]

No. 599.

Attachment in Personam.

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal of the — District of —, Greeting:

Whereas a libel has been filed in the district court of the United States for the — district of —, on the — day of —, by A. B. against C. D., in a certain action, civil and maritime, for [*as may be*]. And whereas, by the mandate of the Honorable G. W., judge of the said court, process of attachment has been awarded against the said C. D.

Now, therefore, we do hereby command you that you attach the said C. D., if he shall be found in your district, and him safely keep, so that you have him before the judge

of the said court, at a session of the same court to be holden at —, on the — day of —, to answer the said libel and to make — allegations in that behalf.

And have you then and there this writ.

[*Teste. See No. 30.*]

No. 600.

Writ of Seizure.

The United States of America,

— District of —, ss.

The President of the United States of America to the Marshal of said District, Greeting:

Whereas an information has been filed in the district court of the United States for the — district of —, on the — day of —, in the year of our Lord one thousand eight hundred and ninety —, by J. H., United States district attorney for the — district of —, setting forth in substance that the vessel known and licensed as the [*name of vessel*] was engaged in bringing contraband goods into the port of — [*or whatever the charge may be*], contrary to the provisions of section — of the Revised Statutes of the United States in such cases made and provided in a cause of seizure, civil and maritime, for the reasons and causes in the said information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said vessel, [*name of vessel*], may be cited, general and special, to answer the premises, and due proceedings being had, the said vessel, [*name of vessel*], may, for the causes in the said information mentioned, and other causes appearing, be condemned by the definitive sentence and decree of this court, and forfeited to the use of the United States, according to the statutes in such case made and provided.

You are hereby commanded to attach the said vessel, with her tackle, apparel, and furniture, and the cargo found on

board of her, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said information, that they be and appear before the said court, to be held in and for the — district of —, on the — Tuesday of —, 1894, at ten o'clock in the forenoon of the day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf.

And what you shall have done in the premises do you then and there make return thereof, together with this writ.

[*Add teste. See No. 30.*]

ORDERS AND DECREES.**No. 601.****Decree Dismissing Libel.**

[*Caption.*]

And now, to wit, on the — day of —, 1894, this case having been heard on the pleadings and proofs, and after argument of advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libel be, and the same is hereby dismissed for want of jurisdiction of this court in the matter (1).

(1) Or say, "with costs," or, "each party to pay his own costs."

No. 602.**Decree for Libellant.**

[*Caption.*]

And now, to wit, on the — day of —, 1894, this case having been heard upon the pleadings and proofs, and after argument of the advocates for the respective parties, and due deliberation being had thereon, the court finds that there is due to the libellant [on contract, *or as may be*], the sum of — dollars, and that the same is a lien upon the said vessel, in consideration whereof it is now ordered, adjudged, and decreed by the court that the respondent, L. M., pay to the libellant, A. B, the sum of — dollars, with interest from the — day of —, amounting to — dollars, with his costs to be taxed.

No. 603.**Decree in rem for Sale of Vessel.**

[*Caption.*]

And now, to wit, on the — day of —, 1894, this case having been heard upon the pleadings and proofs, and after argument of the advocates for the respective parties hereto, and due deliberation being had thereon, the court finds that there is due to the libellant [on contract, *or as may be*], the sum of — dollars, and that the same is a lien upon the said vessel, in consideration whereof it is now ordered, adjudged, and decreed that the libellant, A. B., recover of the ship — the amount due him on his contract, as set forth in the libel, to wit, the sum of — dollars, together with costs, and that the said ship —, her tackle, sails, apparel, furniture, boats, and other appurtenances be condemned and sold to pay the same, the proceeds of said sale to be paid into the registry to await further order of the court.

No. 604.**Decree for Libellant when Vessel has been Released on Bond.**

[*Proceed as in No. 602 and add*] it further appearing to the court that the said vessel has been released to the claimant upon a stipulation in the sum of — dollars, with E. H. and F. G. as sureties, it is hereby ordered that the said C. D., claimant, and E. H. and F. G., sureties, pay the said sum of — dollars, with cost taxed at — dollars, within twenty days from the date of this decree, and in default thereof execution be and the same is hereby awarded.

No. 605.**Decree for Wages.**

[*Caption.*]

And now, to wit, on the — day of —, 1894, this case having been heard upon the pleadings and proofs, and

after argument of the advocates for the respective parties and due deliberation being had thereon, the court finds that there is due to the libellant, on his contract for services, the sum of — dollars, and that the same is a lien on the said vessel, in consideration whereof it is ordered, adjudged, and decreed that the libellant, A. B., recover for service on board the said ship —, the sum of — dollars, deducting therefrom the sum of — dollars, advanced wages, making the sum due — dollars, which said sum it is ordered that the respondent pay to the libellant, together with his costs to be taxed.

606.**Decree Pro Confesso.**

[*Caption.*]

And now, to wit, on the — day of —, 1894, on motion of R. X., proctor for the libellant, it is ordered, adjudged, and decreed that the libel be taken *pro confesso* for default of answer thereto by the said respondent, and that the libellant, A. B., recover from the respondent, L. M., the sum of — dollars, together with his interest thereon, amounting to — dollars, being in all — dollars, together with his costs.

No. 607.**Decree Pro Confesso to a Libel in rem.**

[*Caption.*]

And now, to wit, on the — day of —, 1894, on the motion of R. X., proctor for the libellant, and on presentation of the affidavit of —, libellant, in support of his claim, it is ordered, adjudged, and decreed that the libel be taken *pro confesso* for default of answer thereto, and that the libellant recover of the said ship — the sum of — dollars, with costs; and it further appearing that proclamation having been duly made, and that no claimant has appeared on

like motion of the said proctor for libellant, it is ordered, adjudged, and decreed that the said ship —, her tackle, sails, apparel, furniture, boats, and other appurtenances be condemned and sold to pay the said decree, with costs, and that a writ of sale be issued forthwith, and the said proceeds of sale be paid into the registry to await the further order of the court.

No. 608.

Decree for Salvage.

[*Caption.*]

And now, to wit, on the — day of —, 1894, this case having been heard on the pleadings and proofs, and after argument by the advocates for the respective parties, and due deliberation thereof being had, the court finds [*state what*], and it is ordered, adjudged, and decreed that the libellants recover of the respondent, C. D., or his stipulators, E. F. and G. H., the sum of — dollars, for their services as salvors as in the libel set forth, together with costs, and it is ordered, adjudged, and decreed that the said sum of — dollars be distributed as follows: [*Here state name and occupation of each person recovering, and the amount due him.*]

No. 609.

Interlocutory Decree for Sale of Vessel.

[*Caption.*]

And now, to wit, on the — day of —, 1894, on reading and filing the affidavits of A. B. and C. D., and the admission of the proctors for the respective claimants, and on motion of R. X., Esquire, proctor for the libellant, it is ordered that the ship —, her tackle, sails, apparel, furniture, boats, and appurtenances be sold by the marshal on six days' public notice, and that a *venditioni exponas* be issued accordingly, and that the marshal bring the proceeds of such sale into the registry to await the further order of the court.

No. 610.**Interlocutory Decree for Sale of Perishable Property.**

For form of Decree, consult No. 609.

No. 611.**Final Decree in Proceedings for Limitation of Liability
in Admiralty (1).**

[*Caption.*]

A libel and petition of said T. Steamship Co. having been filed in this court, showing that it is the owner of the late steamship D., which broke its shaft and was abandoned on the high seas on the — day of —, 1894, resulting in the total loss of said vessel with the cargo laden thereon; and it further appearing therefrom that at the time of filing said libel and petition various actions were threatened by certain passengers thereon, and that one suit was pending against the petitioner by one X. Y., as plaintiff, in the supreme court of the state of —, in the city and county of —, within the — district of —, to recover for loss, damage, and destruction of baggage shipped or put on board said steamship; and it also appearing that such loss, damage, injury, and destruction of property were occasioned without the privity or knowledge of said petitioner, and that said petitioner desires to claim the benefit of the limitation of liability provided for in the act of congress of the United States, entitled "An act to limit the liability of shipowners, and for other purposes," passed March 3, 1851, now embodied in Sections 4283 to 4285 of the Revised Statutes of the United States, and the several acts and statutes amendatory thereof and supplemental thereto; and said petitioner having contested any and all liability in respect to said loss, destruction, damage, and injury (independently of the limitation of liability claimed), and said libel and petition having stated the facts and circumstances by reason of which exemption from lia-

bility is claimed; and an order of this court having been made thereon, dated the — day of —, 1894, whereby it was ordered that the said petitioner transfer its interest in the said steamship and her freight for the voyage in said libel and petition mentioned to S. L., to act as trustee for the person, or persons, who may prove to be legally entitled thereto, pursuant to the provisions of said act of congress of the United States, and the statutes amendatory thereof and supplemental thereto; and the petitioner having duly complied with said order, and having made said transfer to said trustee, as appears by the instrument of transfer duly executed by said petitioner to said trustee, bearing date of the — day of —, 1894; and an order having also been made, dated on said — day of —, 1894, directing a monition to issue out of and under the seal of this court, citing all persons claiming damages for the loss, destruction, damage, and injury, to appear before this court and make due proof of their respective claims, with liberty also, upon making proof, to answer said libel and petition; and a monition having been thereupon, and on the said — day of —, 1894, duly issued in pursuance of said last-mentioned order, and the said monition having been duly returned by M. T., the marshal of the United States for the — district of —, with proof of due personal service of said monition on the attorney of record for X. Y., the plaintiff in the suit brought and pending against said petitioner, and also due proof of the giving of due notice of said monition by publication in conformity with the directions in said last-mentioned order. And on the return of said monition, proclamation having been duly made for all persons claiming any damages for any loss, destruction, damage, or injury occasioned by the disaster above referred to, to appear and present their claims, and such answers and exceptions as they should be advised, and no person having appeared, and no answer or exceptions having been filed, and the default of all persons having been duly noted. And a report having been duly rendered and filed by S. L., commissioner appointed in this proceeding as

aforesaid, which report bears the date of the — day of —, 1894, from which it appears that no claims have been presented to him by any person or parties whatsoever, and it further appearing from said report and the testimony filed therewith that said steamship D. was lost and abandoned at sea on the — day of —, 1894, and that the circumstances of said disaster have been correctly set forth in the libel and petition herein, and that said loss and disaster were done and occasioned without fault, privity, or knowledge of the petitioner herein, or of any of its servants, but were due solely to the perils of the seas; and that at the time of starting upon said voyage from — said steamship was in good condition, and was in every respect fully manned and equipped; and it being also reported by said commissioner that the petitioner herein is entitled to the benefit of the limitation of liability provided for in the act of congress of the United States, entitled "An act to limit the liability of shipowners, and for other purposes," passed March 3, 1851, now embodied in Sections 4283 and 4285 of the Revised Statutes of the United States, and the several acts and statutes amendatory thereof and supplemental thereto; and the said S. L., as trustee, having also made and filed his report as such trustee, wherein he finds and reports that said steamship D. has become a total loss, and that nothing has been received or recovered therefrom, and that no freight moneys have been earned, paid, or received therefrom, and that nothing has therefore come to him or is recoverable by him as such trustee, and said reports coming on to be heard, now upon motion of S. & G., proctors for the petitioner.

It is ordered that the several reports of S. L., as commissioner and as trustee, be, and they each are hereby, in all things confirmed; and that the defaults of all and every persons, and parties thereto be, and the same hereby are, entered herein, and that the allegations of said libel and petition stand as confessed and admitted.

It is further ordered, adjudged, and decreed that said petitioner, the T. Steamship Co., as owner of the late steam-

ship D., is entitled to the benefit of the limitation of liability provided for in the act of congress of the United States, entitled "An act to limit the liability of shipowners and for other purposes," passed March 3, 1851, now embodied in Sections 4283 to 4285 of the Revised Statutes of the United States, and the several acts and statutes amendatory thereof and supplemental thereto.

And it is further ordered, adjudged, and decreed that said libellant and petitioner be, and it hereby is, forever discharged from all and every claim or demand arising from or growing out of said disaster to the said steamship D., or out of the loss and abandonment of said vessel, and the loss or injury to any cargo, property, effects, and goods then laden thereon.

It is further ordered that said X. Y., his agents, attorneys, proctors, and counsel refrain from the further prosecution of said action begun by him against said petitioner to recover for the loss, destruction, and injury as aforesaid.

It is further ordered that all other persons whomsoever claiming, or who may hereafter claim, for any loss, destruction, damage, or injury occasioned by said disaster to the steamship D., or by her loss and abandonment, be, and the same hereby are, perpetually restrained and enjoined from bringing, commencing, or instituting, or further prosecuting any suit or suits, or proceedings whatever, upon any cause of action whatsoever, against the T. Steamship Co. for any loss, damage, or injury done, suffered, or occasioned by reason of the loss and abandonment of said steamship D., as aforesaid.

And it is further ordered that this decree be served within the — district of —, in the usual manner, and within any district or districts of the United States other than the — district of —, by the United States marshal for such other district or districts respectively, by delivering a copy of such original decree, and exhibiting a certified copy thereof to the party or person to be served.

(1) See Petition for Limitation of Liability, No. 572.

No. 612.**Order of the Court on the Return of Mesne Process in Rem.**

[*Caption.*]

The marshal having returned upon the monition in this cause that he had attached the said ship, her tackle, etc., and cargo, and had given due notice to all persons claiming the same that this court would on this day proceed to the trial and condemnation thereof, should no claim be interposed for the same.

On motion of Mr. X., proctor for the libellants, proclamation was made for all persons having anything to say why the said vessel and her cargo should not be condemned and sold to answer the prayer of the libellants to appear, and on like motion ordered that the defaults of all persons who have not already filed their claims be entered.

No. 613.**Proclamation on the Return of Process in Rem.**

Hear ye! hear ye! A. B. and S. B., against the ship —, her tackle, apparel, and furniture, and cargo. All persons who have anything to say why the ship —, her tackle, apparel, and furniture, and cargo should not be condemned and sold to answer the prayer of the libellants in this cause, come forward and make your allegations in that behalf.

No. 614.**Replication to Claim and Answer.**

[*Caption.*]

Now comes A. B., libellant, and for replication to the claim and answer of L. M., claimant and respondent, alleges that he will aver, maintain, and prove his libel to be true, certain, and sufficient; and that said claim and answer

of the said claimant and respondent is uncertain, untrue, and insufficient, and he humbly prays as in and by his libel he has already prayed.

X. & X.,
Proctors for Libellant.

No. 615.

Commissioner's Report:

[*Caption.*]

To the Honorable G. W., Judge of the District Court of the United States for the — District of —:

In pursuance of a decretal order of reference made and entered in the above entitled cause, by which it was referred to me to ascertain the amount of the damages sustained by the libellants, and report thereon to the court, I do respectfully report that I have been attended on such reference by the proctors for the respective parties and witnesses, and have taken and examined the proofs offered in evidence, and thereupon report as follows:

That the amount of the damages sustained by the libellants, being the expense of

Lightering cement	\$—
Barrels	\$—
Cooperage	\$—
Cleaning and repacking cement	\$—
Total	\$—
Credit allowed	\$—
With interest	\$—
from — day of —, 1894, to date	\$—
Is in all the sum of	\$—

— dollars at the date of this report.

All of which is respectfully submitted.

J. N.,
U. S. Commissioner.

Dated —.

No. 616.**[Caption.] Exceptions to Commissioner's Report.**

The claimants except to the commissioner's report herein, for the following reasons :

First. Because he has reported that the libellants were entitled to the value of the charter money of C., as well as to — dollars for the use of the M. for eight days, during which the M. was employed, whereas he should have allowed for those days only the amount paid the M.

Second. Because he has allowed the libellants the full amount of the charter money of the C., when the evidence shows that no charter money was lost by reason of the C. being damaged.

Third. Because he has allowed for a new wheel of the C.

Fourth. Because he has reported that the libellants are entitled to recover — dollars for repairs.

Fifth. Because he has reported that the libellants are entitled to recover — dollars for demurrage.

Sixth. Because he has reported that the libellants are entitled to recover the sum of — dollars.

Seventh. Because he has adopted an erroneous rule of damages, and allowed more than the market value of the C. during the detention.

Eighth. Because he has allowed to the libellants for demurrage more than they actually lost, viz., more than the expense incurred by them in performing the various charters of the C.

Ninth. Because he has not adopted the principle of *restitutio in integrum*, but by his report has held that the libellants could make a profit out of the disaster.

R. Z.,
Claimants' Proctor.

No. 617.**Order Appointing Appraisers.**

[*Caption.*]

Upon the affidavit of — [or, consent of the parties hereto], now, on motion of Z. & Z., proctors for the owners of said bark —, it is ordered that E. F., and G. H. be, and they hereby are, appointed appraisers to appraise the value of the bark —, her tackle, etc., and return the appraisement made to the clerk of this court forthwith. And that before proceeding to make such appraisement said appraisers choose in writing a third person, who shall act with them in case they disagree as to the value of said vessel; that the appraisement be made in the first instance by the two appraisers herein-named, and that in case they can not agree, then the third person so chosen act with them, and the appraisement of two said appraisers stand as the appraisement of said vessel.

No. 618.**Notice to Appraisers.**

[*Caption.*]

E. F.,

Sir: Take notice that you, together with G. H., have been appointed appraiser to appraise the value of the bark —. You will please call at the office of the clerk of the district court of the United States, in the city of —, at — o'clock a. m., on the — instant, and take and subscribe the oath required by law.

B. R.,
Clerk.

No. 619.**Oath of Appraisers.**

[*Caption.*]

State of —,

County of —, ss.

We, the undersigned, having been appointed appraisers to appraise the value of the bark —, do solemnly swear that

we will faithfully appraise the same to the best of our skill and ability.

E. F.

G. H.

Subscribed and sworn to before me this — day of —, 1894.

J. N.,

[Seal.]

Notary Public in and for
— County.

No. 620.

Notice of Appraisement.

[Caption.]

The undersigned, having been duly appointed appraisers to appraise the bark —, her tackle, etc., do hereby give notice that they will proceed to appraise said bark at the — wharf, —, where she now lies, on the — day of —, at ten o'clock a. m. of that day.

E. F.,

G. H.,

Dated —.

Appraisers.

No. 621.

Report of Appraisers.

[Caption.]

We, the undersigned, having been duly appointed and sworn as appraisers to appraise the bark —, her tackle, etc., do report that we have examined and appraised said bark, and do find that said bark, her tackle, etc., are worth the sum of — dollars.

All of which is respectfully submitted,

E. F.

Dated —.

G. H.

No. 622.

Order for Transfer to Trustee.

[Caption.]

Upon reading and filing the libel and petition of the T. Steamship Company, as owner of the late steamship D.,

showing that it has been sued as such owner by one X. Y., claiming to have been owner of certain passenger's baggage lost and destroyed on said vessel at the time of the abandonment of said steamship on the — day of —, 1894, to recover for such loss, destruction, damage, and injury; and that other actions are threatened against said petitioner, and that the whole value of said vessel and her freight has been totally lost, and that the same is therefore not sufficient to make compensation to each of the freighters and owners therefor; and that such loss, destruction, damage, and injury was done, occasioned, and incurred without the privity or knowledge of such owner, and that said petitioner desires to claim the benefit of the limitation of liability provided for in the third and fourth sections of the act of congress, entitled "An act to limit the liability of shipowners and for other purposes," passed March 3, 1851, now embodied in sections 4283 to 4285 of the Revised Statutes of the United States, and the various statutes in addition thereto and amendatory thereof, and also to contest its liability and the liability of said vessel for said loss, destruction, damage, and injury, independently of the limitation of liability claims under said act, said libel and petition also stating the facts and circumstances on which such exemption from and limitation of liability are claimed, and praying proper relief in the premises in that behalf, and the said owner having elected to make a transfer as hereinafter provided,

It is hereby ordered, in conformity with said act of congress and the statutes amendatory thereof, and the rules of the supreme court of the United States made in pursuance thereof, that said T. Steamship Co. transfer its interest in the late steamship D. and her freight for the said voyage, for the benefit of all such claimants, to S. L., of the city of —, who is hereby appointed, pursuant to the provisions of the fourth section of said act, to be trustee for the person or persons who may prove to be legally entitled thereto.

No. 623.**Transfer to Trustees.**

[*Caption.*]

Whereas a petition has been filed by the above-named petitioner, as owner of the late steamship D., praying for a limitation of its liability in respect to such vessel; and whereas, by an order duly made herein, S. L. has been appointed trustee, to whom the petitioner's interest in said steamship and her freight is directed to be transferred for the benefit of the claimants thereto.

Now, therefore, in consideration of the premises, and in compliance with the said orders of this honorable court, the T. Steamship Co., of——, above-named, by its agents thereunto duly and lawfully authorized, in pursuance of the act of congress of the United States, entitled "An act to limit the liability of shipowners and for other purposes," passed March 3, 1851, now embodied in Sections 4283 to 4285 of the Revised Statutes of the United States, and the several statutes amendatory and supplemental thereof, and in compliance with the rules of the supreme court of the United States made in pursuance thereof, does hereby grant, assign, transfer, and set over absolutely all its right, title, and interest, and property in and to said steamship known as the D., her engines, boiler, tackle, apparel, and furniture, or any savings, remnants, or wreckage of said steamship, her engines, boilers, tackle, apparel, and furniture, and in and to the freight of said steamship for her last voyage, in said petition mentioned, whether now or hereafter obtained, unto S. L., as trustee, appointed by the said order of the district court as aforesaid, to have and to hold the same to him and his successors for the proper uses and offices of his said office of trustee. Power is hereby granted and conveyed to the said S. L., trustee as aforesaid, and his successors in office, to make and enforce, by such actions at law or otherwise as may be necessary, all claims and demands of said T. Steamship Co. for said steamship, her remnants and freight.

In witness whereof, said T. Steamship Co. has subscribed these presents by its general agents for the United States, at the city of —, on the — day of —, in the year one thousand eight hundred and ninety-four.

Taken and acknowledged in the presence of, *etc.*

No. 624.

Notice for Publication (1).

The United States of America,
— District of —, ss.

On the — day of —, 1894, a libel was filed in the district court of the United States for the district aforesaid, by A. B., [*occupation*], libellant, against the ship —, her tackle, sails, apparel, furniture, boats, and other appurtenances, alleging in substance that, *etc.*, [*here state succinctly the substance of the libel, and continue as follows:*] and prays process against said vessel, and — dollars for wharfage [*or as may be*], and that said ship —, her tackle, sails, apparel, furniture, boats, and other appurtenances may be condemned and sold to pay such wharfage, with costs, charges, and expenses.

Now, therefore, in pursuance of the said monition, under the seal of the said court, to me directed and delivered, I do hereby give public notice to all persons claiming the said ship —, her tackle, sails, apparel, furniture, boats, and other appurtenances, or in any manner interested therein, that they be cited to appear before the said district court, to be held at the city of —, in and for the — district of —, on the first Tuesday of — next, at 10 o'clock in the forenoon of that day, provided the same shall be the day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose the claims and to make their allegations in that behalf. T. M.,

R. X.,

United States Marshal.

Proctor for Libellant.

Dated at —, the — day of —, 1894.

(1) See 9th Rule in Admiralty.

No. 625.**Notice of Motion.**

[Caption.]

Messrs. Y. & Y.,

Proctors for Respondent.

Gentlemen :

You are hereby notified that before his honor, G. W., judge of this court, at chambers in the courthouse, in the city of —, on —, the — day of —, 1894, at ten o'clock in the forenoon of that day, a motion will be made for an order, that, etc. [*here state what will be asked*].

Yours very truly,

X. & X.,

Dated —.

Proctors for Libellant.

Service accepted this — day of —, 1894.

Y. & Y.

No. 626.**Affidavit to Obtain Attachment on Libel for Wages (1).**

The United States of America,

— District of —, ss.

On this — day of —, 1893, before me, at —, personally appeared the within-named J. S., and made oath that he has read the foregoing libel, and that the matters stated therein are just and true as he verily believes, and that the said vessel is about to proceed to sea within twenty-four hours, and before the expiration of ten days after the delivery of her cargo [*or, that the said vessel has left the port of delivery where the voyage ended*], without paying him the wages due as aforesaid.

J. S.

Subscribed and sworn to before me the day first above-mentioned.

J. N.,

[Seal.]

United States Commissioner
in and for the —
District of —.

No. 627.**Preliminary Summons for Seamen's Wages (1).**

The United States of America,

— District of —, ss.

To the Master and Owners of the Ship [brig, *or*, steamboat, *etc.*] called the —:

You are hereby summoned to appear before me, J. N., [*name and title of officer*], at my office, No. — — street, in the city of —, on the — day of —, 1893, at — o'clock — m., then and there to show cause, if any you have, why process of attachment should not issue from the district court of this district against the above-named vessel, her tackle, sails, apparel, furniture, boats, and appurtenances, according to the course of admiralty courts, and answer the claim of A. B. for mariner's wages.

Given under my hand this — day of —, in the year of our Lord 1893.

[*Seal.*]

J. N.,

U. S. Commissioner.

(1) See R. S., Secs. 4546 and 4547.

No. 628.**Certificate of Magistrate (1).**

The United States of America,

— District of —, ss.

I, R. S., [*official character*], do hereby certify that there is in my opinion sufficient cause of complaint whereupon to found admiralty process at the suit of A. B. for mariner's wages against the ship [*or*, brig, *etc.*] —, her tackle, sails, apparel, furniture, boats, and appurtenances, to answer for the wages of A. B.

J. N.,

Dated this — day of —, 1893.

[*Official Title.*]

(1) See R. S., Secs. 4546 and 4547.

APPELLATE PROCEEDINGS.**No. 629.****Notice of Appeal in Admiralty.***[Caption.]*

Y. & Y.,

Proctors for Claimant and Appellee :

Sirs: Take notice that the libellant above-named hereby appeals to the United States circuit court of appeals for the — circuit, from the final decree entered herein on the — day of —, 1894.

X. & X.,

Proctors for Libellant and Appellant.

Dated —.

No. 630.**Petition of Appeal.***[Caption.]*

To the Honorable Judges of the United States Circuit Court of Appeals for the — Circuit:

A. B., the libellant and appellant herein, respectfully shows as follows :

First. On or about the — day of —, 1894, the libellant filed a libel in the district court of the United States for the — district of — against the above-named schooner, in a cause civil and maritime, to recover the sum of — dollars for damages alleged to be due the libellant from said schooner, with interest and costs, as by reference to said libel will more fully appear.

Second. On or about the — day of —, 1894, the claimant duly appeared and filed his answer to said libel, praying that the libel be dismissed with costs, as by reference to said answer will more fully appear.

Third. In —, 1894, said cause came on for hearing before the Honorable G. W., judge of the said district court, and such proceedings were had that on the — day of —, 1894, a final decree was made and entered in said suit, whereby it was adjudged that the libel be dismissed and that the claimants recover the sum of — dollars as costs.

Fourth. The above-named libellant and appellant is advised and insists that said final decree is erroneous, in that it does not decree payment of the libellant's claim with interest and costs.

Fifth. For this and other reasons the above-named libellant and appellant appeals from said final decree to the United States circuit court of appeals for the — circuit, and on said appeal intends to seek a new decision on the law and on the facts, upon the pleadings and proofs in said district court, and upon new pleadings and proofs to be introduced in this court, and prays that the record and proceedings aforesaid may be returned to the United States circuit court of appeals for the — circuit, and that said decree may be reversed and the libellant be decreed payment of his claim with interest and costs in the district court and in this court.

X. & X.,
Proctors for Appellant.

No. 631.

Order for Mandate in Admiralty.

[*Caption.*]

This cause having come on to be heard on appeal from the decree of the district court of the United States for the — district of —, entered herein —, 1894, now, on motion of X. & X., proctors for the libellant and appellant, it is ordered that the said decree be, and the same hereby is reversed, with costs of this court, and that the costs of the district court be apportioned, and that a mandate issue to said district court directing said court to proceed in accordance with the opinion of this court.

No. 632.

Mandate in Admiralty.

[Caption.]

The President of the United States of America to the Honorable the Judge of the District Court of the United States for the — District of —, Greeting:

Whereas, lately in the district court of the United States for the — district of —, before you in a cause between A. B., libellant and appellee, and the steamship X., whereof L. M. is claimant and appellant, wherein the decree of said court is in the words and figures following, viz.: [*here state the decree of the district court*], as by the inspection of the transcript of the record of said court, which was brought into the United States circuit court of appeals for the — circuit by virtue of an appeal taken out by said A. B., agreeably to the act of congress in such case made and provided, fully and at large appears;

And whereas, in the present term of —, in the year of our Lord one thousand eight hundred and ninety-four, the said cause came on to be heard before the United States circuit court of appeals for the — circuit on the said transcript of record, and was argued by counsel;

On consideration whereof, it is now ordered, adjudged, and decreed by this court that the decree of the district court be, and the same hereby is, affirmed, with the costs of this court, amounting to the sum of — dollars.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

[Add teste. See No. 31, signed by clerk of the court of appeals.]

No. 633.**Final Decree on Mandate in Admiralty.**

[*Caption.*]

The decree of this court entered herein on the — day of —, 1894, having been affirmed on appeal to the United States circuit court of appeals for the — circuit, as appears from the mandate of said court filed herein the — day of —, 1894, now, on motion of X. & X., proctors for the libellant and appellee, it is ordered, adjudged, and decreed that the libellant above named recover herein the sum of — dollars damages, and for the further sum of — dollars, interest thereon from the date of the report of the commissioner herein, and the further sum of — dollars, costs of this court, and the further sum of — dollars, costs of said court of appeals, making in all the sum of — dollars, for which sum the above-named vessel, her tackle, etc., are hereby condemned.

And it is further ordered, adjudged, and decreed that the stipulation for costs and value on the part of the claimant and the sureties on the bond given on appeal herein, cause the engagements of their stipulations and bond to be performed, or show cause why execution should not issue against their goods, chattels, and lands in satisfaction hereof.

REMOVAL FROM STATE COURTS.

No. 634.

Petition for Removal on the Ground of Citizenship (1).

State of —,

— County Common Pleas Court.

A. B., Plaintiff,	}	Petition for removal to the Circuit Court of the United States for the — District of —.
<i>vs.</i>		
C. D., Defendant.		

Your petitioner, C. D., respectfully shows to this honorable court that he is one of the defendants in this suit, which is of a civil nature, and that the matter and amount in dispute in this cause exceeds the sum or value of two thousand dollars, exclusive of interest and costs (2); and

That the controversy herein is between citizens of different states; that the plaintiff, A. B., was at the time of the commencement of this suit, and still is, a citizen of the state of —, residing at —, in said state, and that your petitioner, C. D., was at the time of the commencement of this suit, and still is, a citizen of the state of —, and of no other state, residing in the city of —, in said state (3) [*or, an alien, namely, a subject of the king of —, and now residing at —, in the state of —, and not a resident of the state of —, naming the state in which the suit is pending* (4), *or as may be*]; and that your petitioner desires to remove this suit before the trial thereof into the next circuit court of the United States, to be held in the — district of —.

And your petitioner offers herewith good and sufficient surety for his entering in the circuit court of the United

States for the — district of —, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by the said circuit court of the United States, if said court shall hold that this suit was wrongfully and improperly removed thereto.

And your petitioner therefore prays that the said surety and bond may be accepted; that this said suit may be removed into the next circuit court of the United States, to be held in the — district of —, pursuant to the statutes of the United States in such case made and provided, and that no further proceedings may be had herein in this court.

And he will ever pray.

C. D.

Y. & Y.,

Attorneys for Petitioner.

(1) Desty's Fed. Proc., Sec. 98. The petition should be filed in the state court within the time allowed the defendant to plead. Desty's Fed. Proc., 108; see also *R. I. Nat. Bank vs. Keator Lumber Co.*, 52 Fed. Rep., 897.

(2) See Foster's Fed. Prac., page 820, and cases cited in notes.

(3) Desty's Fed. Proc., Sec. 98. *Grace vs. Am. Central Ins. Co.*, 109 U. S., 278; *Freeman vs. Butler*, 39 Fed. Rep., 1. Must allege that the difference of citizenship existed when suit was commenced. *Gibson vs. Bruce*, 108 U. S., 561; *H. & T. R. R. Co. vs. Shirley*, 111 U. S., 358; *Akers vs. Sker*, 117 U. S., 197; *Stevens vs. Nichols*, 130 U. S., 230; *Jackson vs. Allen*, 132 U. S., 27; *Camprelle vs. Balbach*, 46 Fed. Rep., 81.

(4) See *Walker vs. O'Neill*, 38 Fed. Rep., 374; also, *Meyer et al. vs. Herrera*, 41 Fed. Rep., 65; also, *Scott vs. Texas Land & Cattle Co.*, 41 Fed. Rep., 225.

No. 635.

Verification of above Petition.

State of —,
County of —, ss.

C. D. makes oath and says that he is the petitioner above-named; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged

upon information and belief, and as to those matters he believes it to be true (1). C. D. (2)

Subscribed and sworn to before me this — day of —,
1894. J. N.,

[Seal.]

Notary Public in and for —.

(1) It is not necessary, but it is better practice to have the petition verified. *Sweeney vs. Coffin*, 1 Dill., 73; *Allen vs. Ryerson*, 2 Dill., 501; *Houser vs. Clayton*, 3 Woods, 273. See Removal Cases, 100 U. S., 457, 471. *Kansas City, F. S. & M. R. R. Co. vs. Daugherty*, 138 U. S., 298, 303.

(2) May be signed by either the petitioner or his attorney at law, or in fact. *Foster's Fed. Prac.*, page 820, and cases cited in notes.

No. 636.

Petition for Removal because of the Subject-Matter of the Suit.

No. 634 will form a sufficient guide except that there should be inserted a clause in that form in which all the facts are fully set forth to show that the case arises under the constitution or laws of the United States, or treaties made under their authority (1).

(1) *Desty's Fed. Proc.*, Secs. 96 and 97.

It must appear clearly and unmistakably from the record that a federal question must be decided. *Iowa vs. Railway Co.*, 33 Fed. Rep., 391; see also *Illinois vs. Railway Co.*, 33 Fed. Rep., 721.

No allegation of amount involved is necessary, because such suits, whatever the amount involved, may be removed by non-resident defendant. See *arguendo* in *Fales vs. Railway Co.*, 32 Fed. Rep., 673.

No. 637.

Petition for Removal by one or more of several Defendants when there is a Separable Controversy (1).

[Entitle in State Court.]

[No. 634 will form a sufficient guide by inserting in place of the second paragraph in that form, the following:]

Your petitioner further shows to this honorable court that there is in said suit a controversy which is wholly between

citizens of different states, and which can be fully determined as between them, to wit, a controversy between your said petitioner, who avers that he was, at the time of the bringing of this suit, and still is, a citizen of the state of —, and the said plaintiff, [*or, A. B., one of the said plaintiffs, as the case may be,*] who, as your petitioner avers, was then, and still is, a citizen of the state of —; that the said controversy is of the following nature, viz.: [*the nature of the separable controversy to be here briefly set out,*] and that your petitioner and the said plaintiff are both actually interested in said controversy.

(1) For examples of separable controversy, see *Vinal vs. Continental Co.* 34 Fed. Rep., 228; *Boyd vs. Gill*, 21 Blatch., 543, 19 Fed. Rep., 145. A case involving but a single controversy can not be removed. See *Western Union Telegraph Co. vs. Brown*, 32 Fed. Rep., 337; *Weller vs. Tobacco Co.*, 32 Fed. Rep., 360.

A suit by different judgment creditors, whose judgments are not disputed, and set aside and an assignment when the only issue is as to the validity of the assignment, contains no separable controversy. *Reineman vs. Ball*, 33 Fed. Rep., 692. As to what is not separable controversy, see *Anderson vs. Appleton*, 32 Fed. Rep., 855; *Richmond & D. R. Co. vs. Finley*, 32 Fed. Rep., 641; *Reed vs. Reed*, 31 Fed. Rep., 49; *Hax vs. Casper*, 31 Fed. Rep., 499; *Wyeaian vs. Horner*, 36 Fed. Rep., 130; *Woodrum vs. Clay*, 33 Fed. Rep., 897.

An alien can not remove a separable controversy. *King vs. Cornell* 106 U. S., 395; *Woodrum vs. Clay*, *supra*.

No. 638.

Bond on Removal (1).

[*Caption.*]

Know all men by these presents that we, C. D., of the city of —, in the state of —, as principal, and E. F., of —, as surety, are holden and stand firmly bound unto A. B. in the penal sum of — dollars for the payment whereof well and truly to be made unto the said A. B., his heirs, representatives, and assigns, we bind ourselves, our heirs, representatives, and assigns jointly and firmly by these presents.

Upon condition, nevertheless, that whereas the said C. D. has filed his petition in the — county common pleas court of the state of — for the removal of a certain cause therein pending, wherein the said A. B. is plaintiff and the said C. D. is defendant, to the circuit court of the United States in and for the — district of —.

Now, if the said C. D. shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully and improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force and virtue.

In witness whereof, we, the said C. D. and E. F. have hereunto set our hands and seals this — day of —, 1894.

C. D. [Seal.]

E. F. [Seal.]

(1) The bond must be filed with the petition. *Austin vs. Gagan*, 39 Fed. Rep., 626; *Kaitel vs. Wylie*, 38 Fed. Rep., 865. And may be amended as to form. *Harris vs. D., L. & W. R. R. Co.*, 18 Fed. Rep., 833; *Beede vs. Cheeney*, 5 Fed. Rep., 388; *Deford vs. Mehafty*, 13 Fed. Rep., 481. But not as to matters of substance. *Austin vs. Gagan*, above; *Burdick vs. Hale*, 7 Biss., 96.

No. 639.

Oath and Approval of Bond.

State of —,
County of —, ss.

E. F. makes oath and says that he resides in [*he should be a resident within the jurisdiction of the said court*]; that he is a free-holder therein, and is worth the sum of — dollars over and above all property exempt from sale on above execution.

E. F.

Subscribed and sworn to before me this — day of —, 1894.

J. N.,

[Seal.]

Notary Public in and for —.

Approved by H. H., Judge of — Court.

No. 640.**Order for Removal.**

[Entitle in State Court.]

The defendant herein having, within the time provided by law, filed his petition for removal of this cause to the circuit court of the United States for the — district of —, and having at the same time offered his bond in the sum of — dollars, with E. F., good and sufficient surety; pursuant to statute, and conditioned according to law; now, therefore, this court does hereby accept and approve said bond and accept said petition, and does order that this cause be removed for trial to the next circuit court of the United States for the — district of —, pursuant to the statute of the United States, and that all other proceedings of this court be stayed.

No. 641.**Notice of Removal (1).**

[Entitle in Circuit Court of the United States.]

X. & X.,

Attorneys for Plaintiff.

You are hereby notified that on the — day of —, 1894, by an order of the — county common pleas court of the state of —, the above-entitled cause was duly removed from the said court to the circuit court of the United States for the — district of —, and a transcript of the record in said cause was filed in said circuit court of the United States on the — day of —, 1894.

Y. & Y.,

Dated —.

Attorneys for Defendant.

Service accepted this — day of —, 1894.

X. & X.,

Attorneys for Plaintiff.

(1) This notice is not required by the statute, but it is better practice to give the opposite party notice.

No. 642.**Notice of Application for Removal on Account of Local Prejudice (1).***[Entitle in State Court.]*

X. & X.,

Attorneys for Plaintiff.

Please take notice that on the — day of —, at ten o'clock a. m., or as soon thereafter as counsel can be heard, we shall petition his honor, Judge —, of the circuit court of the United States for the — district of —, at the court-rooms in the city of —, to remove the above-entitled cause from the — county common pleas court of the state of —, where it is now pending, to the next circuit court of the United States, to be held in the — district of —, on the ground of local prejudice. We herewith serve upon you copy of petition and affidavits which will be submitted to the court at that time.

Y. & Y.,

Dated —.

Attorneys for Defendant.

Service accepted this — day of —, 1894.

X. & X.,

Attorneys for Plaintiff.

(1) This notice should be served upon the opposite party a reasonable time before the hearing, when the petition is presented to the Federal Court in the first instance. See *Carson & R. Lumber Co. vs. Holtzclaw*, 39 Fed., 578.

No. 643.**Petition for Removal on Account of Local Prejudice (1).**

The Circuit Court of the United States for the
— District of —.

A. B., Plaintiff,	}	Petition for removal from — County Common Pleas Court, State of —.
<i>vs.</i>		
C. D., Defendant.	}	

To the Honorable Judges of the Circuit Court of the United States for the — District of —:

Your petitioner, C. D., respectfully shows to this honorable court that A. B., as plaintiff, brought suit of a civil nature

in the —— county common pleas court in the state of —— against your petitioner, C. D., and that the matter and amount in dispute in said cause exceeds the sum or value of two thousand dollars exclusive of interest and costs.

That the said controversy is between citizens of different states; that the plaintiff, A. B., was at the time of the commencement of this suit, and still is, a citizen of the state of ——, residing at ——, in said state; and that your petitioner, C. D., was, at the time of the commencement of this suit, and still is, a citizen of the state of ——, and of no other state, residing in the city of ——, in said state, and that your petitioner desires to remove this suit which is now pending and undetermined in said state court, before the trial thereof, into the circuit court of the United States to be held in the —— district of ——; and

Your petitioner further shows unto this honorable court that from prejudice and local influence in favor of the plaintiff and adverse to this defendant he will not be able to obtain justice in said court or any other state court to which said defendant may, under the laws of the state, have a right to remove said cause on account of such prejudice or local influences; and

Your petitioner offers herewith good and sufficient surety for all costs that may be awarded by this court, if this court shall hold that this suit was wrongfully and improperly removed hereto; and

Your petitioner therefore prays that the said surety and bond may be accepted; that this suit may be removed from the said common pleas court into the next circuit court of the United States to be held in the —— district of ——, pursuant to the statutes of the United States in such case made and provided; and that a *certiorari* issue, and he will ever pray.

C. D.

Y. & Y.,

Attorneys for Petitioner.

[*Verification. See No. 635.*]

(1) See notes to No. 634.

This petition must be filed in the circuit court of the United States, and it is safer practice to file certified copy of it and the order made by the judge in state court. See *Malone vs. R. Ry. Co.*, 35, Fed. Rep., 625, and *Kaitel vs. Wylie* 38 Fed. Rep., 365.

It is not settled how much evidence is necessary to make it appear to the court that justice can not be had in the state court. See *Desty's Fed. Proc.*, Sec. 99, *et seq.*; *Foster's Fed. Prac.*, Sec. 386; also *in re Pennsylvania Co.* 137 U. S., 451. A bond with good and sufficient surety should be filed at the same time. See No. 638 for form of bond.

No. 644.

Order for Removal on the Ground of Local Prejudice (1).

[*Entitle in Circuit Court of the United States.*]

It appearing to the court from the petition filed in this cause, and the affidavits thereto attached, that, from prejudice or local influence, G. H., E. F., and C. D. will not be able to obtain justice in the — county common pleas court, in the state of —, or any other state court to which the said petitioners would or could, under the laws of the state of —, have the right, on account of such prejudice or local influence, to remove this cause, and that they are therefore entitled to have the removal which they seek, it is accordingly ordered that this cause be, and the same is hereby, removed from the — county common pleas court to this court.

(1) This is taken from the record in *Adelbert College, etc., vs. Toledo, etc., Ry. Co.* 47 Fed., Rep., 836.

No. 645.

Petition of Removal by a Revenue Officer Indicted for Murder (1).

[*Entitle in Circuit Court of the United States.*]

Your petitioner, James M. Davis, would most respectfully show to the court that on the twenty-first day of May, 1878, at the May term of the circuit court of Grundy county, Tennessee, the grand jurors for the state of Tennessee, at the

instance of E. M. Haynes, as prosecutor, indicted your petitioner for willfully, premeditatedly, deliberately, and of his malice aforethought, killing one J. B. Haynes, which indictment and criminal prosecution so instituted is still pending against your petitioner in the circuit court of Grundy county, within the middle district of Tennessee.

And he further shows that no murder was committed ; but, on the other hand, the killing was committed in his own necessary self-defense to save his own life; that at the time the alleged act for which he was indicted was committed he was, and still is, an officer of the United States, to wit, a deputy collector of internal revenue, and the act for which he was indicted was performed in his own necessary self-defense, while engaged in the discharge of the duties of his office as deputy collector of internal revenue; and he was acting by and under the authority of the internal revenue laws of the United States, and was done under and by right of his office, to wit, as deputy collector of internal revenue. It is his duty to seize illicit distilleries and the apparatus that is being used for the illicit and unlawful distillation of spirits, and while so attempting to enforce the revenue laws of the United States, as deputy collector, aforesaid, he was assaulted and fired upon by a number of armed men, and in defense of his life returned fire.

In view of these facts, your petitioner prays that said cause may be removed from the circuit court of Grundy county to the circuit court of the United States for the middle district of Tennessee for trial, and that a *certiorari* issue. And as in duty bound he will ever pray.

James A. Warder,
Attorney.

[*Verification.* See No. 646.]

(1) Taken from opinion in Tennessee *vs.* Davis. 100 U. S., 257. See R. S., Sec. 643; Desty's Fed. Proc., Sec. 106.

No. 646.**Verification of above Petition.**

District of Middle Tennessee,

County of Davidson :

James M. Davis, being duly sworn, deposes and says that he is the petitioner named in the said petition ; that he has heard the same read, and knows the contents thereof, and that the same is true of his own knowledge.

James A. Davis.

Subscribed and sworn to before me this Aug. 13, 1878.

[Seal.]

J. W. Campbell,

U. S. Commissioner for Middle Tennessee.

No. 647.**Petition of Removal by a Revenue Officer in a Civil Action (1).**

[*Entitle in Circuit Court of the United States.*]

Your petitioner, C. D., respectfully represents that heretofore, to wit, on the — day of —, the A. B. Railway Company, a corporation organized and existing under the laws of the state of —, began a civil action against him by filing its petition in the superior court of —, a court of record of the state of —, the said cause being numbered — on the docket of said court ; that the ground of action and prayer in said petition set forth is in substance as follows : [*Here set forth in substance the allegations of the petition in the superior court.*]

And your petitioner further represents, that at the time the said action was begun, and at the time the said acts charged in said petition are alleged to have been done, he was and still is an officer of the United States, to wit, as surveyor of customs for the port of —, as is stated and set forth in the above petition, and of his acts in connection with the receipt and delivery of the merchandise described

in said petition were done by him under color of his said office; and your petitioner further shows that said action was begun with summons which was duly served upon your petitioner within the said — district of —, and said action has not yet been tried.

Wherefore your petitioner prays that your honors will cause a writ of *certiorari* to issue to the said superior court of —, commanding it to send to this honorable court the record of proceedings had in this cause.

R. Y.,

Attorney for Petitioner.

(1) See R. S., Sec. 643 Desty's Fed. Proc., Sec. 106, and cases cited. Taken from the record in Cleveland, Columbus, etc. Ry. Co. *vs.* McClung, in the Circuit Court for the Southern District of Ohio.

No. 648.

Verification to Above Petition.

The United States of America,

— District of —

I, C. D., make solemn oath that the allegations made in the foregoing petition are true, as I verily believe. C. D.

Subscribed and sworn to before me this — day of —, 1894.

B. R.,

[Seal.]

Clerk.

No. 649.

Certificate of Counsel (1).

I, R. Y., as attorney and counselor at law of the several courts of record of the state of —, do hereby certify that as counsel for the above-named petitioner, I have examined the proceedings against him, and carefully inquired into the matters set forth in his petition, and I believe the same are true.

R. Y.,

Counsel for Petitioner.

See note to No. 647.

No. 650.**Notice of Motion to Remand.**

[Entitle in Circuit Court of the United States.]

Y. & Y.,

Attorneys for Defendant :

You are hereby notified, that on the — day of —, 1894, at ten o'clock a. m., or as soon thereafter as counsel can be heard, at the United States court house at —, before said court, a motion will be heard for an order to remand the above-entitled cause to the — county common pleas court, in the state of —, from whence it came. A copy of said motion, and the affidavits of J. H., L. M., and C. D., which will be read at the said hearing, are herewith served upon you.

X. & X.,

Dated —.

Attorneys for Plaintiff.

Service accepted this — day of —, 1894.

Y. & Y.,

Attorneys for Defendant.

No. 651.**Motion to Remand (1).**

[Entitle in the Circuit Court of the United States.]

And now comes the plaintiff, and moves this court to remand the above-entitled cause to the — county common pleas court, in the state of —, on the ground that this court is without jurisdiction to hear and determine the cause.

(1) See *Adelbert College, etc., vs. Toledo, etc. Ry. Co.* 47 Fed. Rep. 836, 842.

No. 652.**Order Remanding Cause.**

This cause coming on to be heard this — day of —, 1894, upon the motion of the plaintiff to remand this cause to the — county common pleas court, in the state of —,

and upon affidavits in support of said motion, and counsel for the respective parties having been heard, and the same having been duly considered by the court, it is ordered that said motion be, and the same is hereby granted, and the cause is hereby remanded to the — county common pleas court in the state of —.

No 653.

Certiorari for Removal of a Cause from a State Court.

The President of the United States of America to the —
County Common Pleas Court of the State of —,
Greeting :

It being represented to us that there is now pending before you a certain cause, No. —, wherein A. B. is plaintiff and C. D. is defendant, which cause was commenced in the — county common pleas court in the state of —, by A. B. against the said C. D., for the purpose of [*set out the purpose and subject-matter of the suit*], and that on the — day of — a summons was issued out of said court, and that no trial has yet been had ; whereas, the said defendant has caused to be filed in our circuit court for the — district of — his petition for the removal of the said cause from the said common pleas court to the circuit court of the United States for the — district of —, and a bond with good and sufficient surety, according to the statutes of the United States in such case made and provided, and has made it appear to us that from prejudice or local influence he will not be able to obtain justice in such state court or any other state court to which the defendant may, under the laws of the state, have the right to remove the said cause, we are willing to remove the said cause, and the records and proceedings therein should be certified by the said common pleas court and removed into our circuit court of the United States in and for the — district of —, and do hereby command you to certify and send the records and proceed-

ings aforesaid, with all things concerning the same, to the said circuit court of the United States, together with this writ, so that you may have the same at the United States court-house in the city of —, in the said district of —, on the — day of —, in the said circuit court, to be then and there held, that the said circuit court may cause to be further done thereupon what of right according to the laws of the United States should be done.

[*Add teste. See No. 31.*]

No. 654.

Marshal's Return of Certiorari (1).

I hereby certify, that the within writ was served personally on S. R., the clerk of the — county common pleas court, on the — day of —, 1894, at his office in the city of —, and that a true copy thereof was then and there delivered to, and left with, him.

H. C.,

Dated —.

United States Marshal for the
— District of —.

(1) This return should be endorsed upon the writ.

No. 655.

Return of Certiorari by the State Court.

[*Entitle in State Court.*]

In obedience to the writ of the *certiorari* issued by the circuit court of the United States for the — district of —, on the — day of —, 1894, and attached hereto, the transcript annexed hereto of the record of this court, with copies of all the papers and proceedings in the above-entitled cause filed and remaining of record in this court, are hereby certified and sent to the said circuit court of the United States as in the said writ directed.

Witness, etc. [*as in the state court*].

APPELLATE PROCEEDINGS.

No. 656.

Explanation.

The appellate proceedings, either on writ of error, or appeal, to a circuit court of appeals and to the supreme court of the United States are practically the same. The following forms may therefore be used in appellate proceedings in a circuit court of appeals or the supreme court of the United States, although the individual forms are entitled in but one court.

There is much doubt whether the statute authorizes writs of error to be issued by the clerks of the inferior courts, and that all such writs should be issued only by the clerk of the supreme court of the United States. It is the practice, however, when a cause is taken from a district or circuit court, for the clerk of such court to issue the writ of error, but when a cause is taken from a circuit court of appeals, the writ of error is issued by the clerk of the supreme court.

With reference to the appellate jurisdiction of the respective courts generally, see act of March 3rd, 1891, 26th Stat. at L., 826, supplement to the Revised Statutes of the United States, Vol. 1st, page 901.

ON WRIT OF ERROR.

No. 657.

On Writ of Error (1).

The Circuit Court of the United States,
for the — District of —.

A. B., Plaintiff,	}	At Law.
<i>vs.</i>		
C. D., Defendant.	}	Petition for Writ of Error.

And now comes A. B., plaintiff, [*or*, defendant], herein, and says that on or about the — day of —, this court entered judgment herein in favor of the defendant [*or*, plaintiff] and against this plaintiff, [*or*, defendant] in which judgment and the proceedings had prior thereunto in this cause certain errors were committed, to the prejudice of this plaintiff [*or*, defendant], all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff [*or*, defendant] prays that a writ of error may issue in this behalf to the United States circuit court of appeals for the — circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the said circuit court of appeals.

R. X.,

Attorney for Plaintiff.

(1) This petition should be entitled and filed in the court at which the trial was had, and the assignment of errors should be filed with this petition. See 11th Rule Circuit Court of Appeals and Desty's Fed. Proc., p. 1119.

No. 658.

Assignment of Errors. (Suit at Law.)

The Circuit Court of the United States,
for the — District of —.

A. B., Plaintiff,	}	At Law.
<i>vs.</i>		Assignment of Errors.
C. D., Defendant.		

The plaintiff [*or*, defendant] in this action, in connection with his petition for a writ of error, makes the following assignment of errors which he avers occurred upon trial of the cause, to wit:

I. The court erred in the rejection of evidence offered by the plaintiff, [*or*, defendant] upon said trial in the following instances, to wit:

(1) In rejecting portions of the evidence of W. B., given by deposition, which evidence was in substance [*here set forth the substance of the deposition*].

(2) In excluding from the testimony of L. H., a witness produced in court and sworn on behalf of the plaintiff [*or*, defendant], this testimony being in substance [*set forth in substance what he testified*].

II. The court erred in the admission of evidence offered by the defendant [*or*, plaintiff] in the following instances, to wit:

(1) In the testimony given by J. S., in substance [*set forth the substance of the testimony*].

(2) In the testimony given by the defendant [*or*, plaintiff] as a witness in his own behalf upon the trial, in substance [*set forth the substance of the testimony*]; also, in answering the questions put to him by his own attorney [*quote the question*] by saying [*quote the answer*].

III. The court erred in making the charge to the jury in refusing to state propositions requested by the plaintiff [*or*, defendant] in the following instances, to wit [*set forth in full the propositions*].

IV. The court erred in using the following language in the charge to the jury [*set forth that part of the charge in which error is charged.*]

V. The court erred in over-ruling the motion of plaintiff [*or, defendant*] for a new trial.

VI. The court erred in entering judgment in favor of the defendant [*or, plaintiff*], and against the plaintiff [*or, defendant*].

X. & X.,

Attorneys for Plaintiff [*or, Defendant*].

No. 659.

Assignment of Errors in the Supreme Court of the United States.

[*Caption.*]

Of — term, in the year of our Lord one thousand eight hundred and —.

Afterwards, to wit, on the first Monday of —, in this same term, before the justices of the supreme court of the United States, at the capitol, in the city of Washington, comes the said A. B., by R. Y., his attorney, and says that in the record and proceedings aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said C. D. to have or maintain his aforesaid action thereof against the said A. B.; there is also error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid given was given for the said C. D. against the said A. B., whereas, by the law of the land, the said judgment ought to have been given for the said A. B. against the said C. D., and the said A. B. prays the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment, etc.

R. Y.,

Attorney for Plaintiff.

No. 660.**Joinder in Error.**[*Caption.*]

And afterwards, to wit, on the first Monday of —, in the — term, in the year of our Lord one thousand eight hundred and —, the said C. D., by R. X., his attorney, freely comes here into court, and says that there is no error, either in the record and proceedings aforesaid, or in the giving of the judgment aforesaid; and he prays that the said supreme court of judicature, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error; and that the judgment aforesaid, in form as aforesaid given, may be in all things affirmed, etc. R. X.,

Attorney for Defendant.

No. 661.**Order allowing Writ of Error.**

The Circuit Court of the United States,
for the — District of —.

A. B., Plaintiff,	}	At Law. No. —.
<i>vs.</i>		
C. D., Defendant.		

This — day of —, came the plaintiff [*or*, defendant] by his attorney, and filed herein and presented to the court his petition, praying for the allowance of a writ of error intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States circuit court of appeals for the — judicial circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the court does allow the writ of error upon the plaintiff [*or*, defendant] giving bond according to law, in the sum of — dollars, which shall operate as a supersedeas bond.

No. 662.

Bond on Writ of Error or Appeal.

[Caption.]

Know all men by these presents, that we, A. B. as principal, and J. S. and L. B., as sureties, are held and firmly bound unto the defendant, C. D., in the full and just sum of — dollars to be paid to the said defendant, C. D., his certain attorneys, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this — day of —, in the year of our Lord one thousand eight hundred and —.

Whereas, lately at a circuit court of the United States for the — district of —, in a suit depending in said court, between A. B. plaintiff and C. D. defendant, a judgment [*or, decree, as may be*] was rendered against the said A. B., and the said A. B. having obtained a writ of error [*or appeal, as may be*] and filed a copy thereof in the clerk's office of the said court to reverse the judgment [*or, decree*] in the aforesaid suit, and a citation directed to the said C. D. citing and admonishing him to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of —, in said circuit, on the — day of — next.

Now, the condition of the above obligation is such, that if the said A. B. shall prosecute said writ of error [*or, appeal, as may be*] to effect and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

S. S.

A. B. [*Seal*]

T. T.

J. S. [*Seal*]

Approved by

L. B. [*Seal*]

H. F.,

Circuit Judge.

No 663.**Writ of Error.**

The United States Circuit Court of Appeals,
for the ——— Circuit.

The United States of America,

——— Judicial Circuit, ss.

The President of the United States,

To the Honorable Judge of the District [*or*, Circuit] court of
the United States for the ——— District of ———, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said district [*or*, circuit] court, before you, or some of you, between A. B., plaintiff, and C. D., defendant, a manifest error hath happened, to the great damage of the said A. B., plaintiff, [*or*, C. D., defendant], as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the ——— circuit, together with this writ, so that you have the same at ———, in said circuit, on the (1) ——— day of ——— next, in the said circuit court of appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

H. F.,

U. S. District [*or*, Circuit] Judge.

[*Add teste according to court issuing the writ. See Nos. 30 and 31.*]

(1) See also No. 58 and note. Not exceeding thirty days from signing the citation.

No. 664.**Writ of Error to State Court.**

The United States of America, ss.

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of —, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said supreme court of the state of —, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between A. B. and C. D., wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity ; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity ; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said C. D., as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the supreme court of the United States, together with this writ, so that you have the same at Washington on the — day of —, 1894 (1), in the said supreme court, to be then and there held, that, the record and proceedings aforesaid being

inspected, the said supreme court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice
 [Seal.] of the said supreme court, the —— day of ——,
 in the year of our Lord —— J. McK.,
 Clerk of the Supreme Court of the
 Allowed by United States.
 Horace Gray,
 Justice.

(1) Not exceeding thirty days from the day of signing (see 8th U. S. Supreme Court Rule), except where time is extended to sixty days, (see 9th U. S. Supreme Court Rule, clause 4.)

No. 665.

Judgment Error to State Court.

[Caption.]

In Error to the Supreme Court of the State of ——.

This cause came on to be heard on the transcript of the record from the supreme court of the state of ——, and was argued by counsel.

On consideration whereof, it is now ordered and adjudged by this court, that the decision of the said supreme court in this cause be, and the same is, hereby affirmed [*or as may be*].

No. 666.

Return by the Clerk on Writ of Error (1).

The United States of America,
 —— Judicial Circuit,
 —— District of ——, ss.

In pursuance of the command of the writ of error within, I, B. R., clerk of the district [*or, circuit*] court of the United States for the —— district of ——, herewith transmit a true

copy of the record, bill of exceptions, assignment of errors, and all proceedings in this case of A. B. *vs.* C. D. lately pending in the district [*or*, circuit] court of the United States for the — district of —, under my hand and seal of said court.

Witness my official signature, and the seal of said circuit court, at the city of —, in said district, this — day of —, in the year of our Lord one thousand eight hundred and —, and of the independence of the United States of America the one hundred and —. B. R.,

[*Seal.*]

Clerk of the District [*or*, Circuit]
Court of the United States
for the — District of —.

(1) The transcript should be annexed to this certificate or return.

No. 667.

Citation (1).

The United States Circuit Court of Appeals,
for the — Circuit.

The United States of America,
— Judicial Circuit, ss.

To C. D., Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the — circuit, to be holden at the city of —, in said circuit, on the — (2) day of — next, pursuant to a writ of error filed in the clerk's office of the district [*or*, circuit] court of the United States for the — district of —, wherein A. B. is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this — day of —, in the year of our Lord one thousand eight hundred and —, and of the independence of the United States of America the one hundred and —.

H. F.,

U. S. Circuit Judge.

(1) This form will furnish a sufficient guide in case of an appeal. See also Nos. 59 and 60.

(2) Not exceeding thirty days from the day of signing.

No. 668.

Acceptance of Service of Citation by Attorney.

I hereby, this — day of —, accept due personal service of this citation on behalf of C. D. and W. L., appellees.

Y. & Y.,

Solicitors for Appellees.

No. 669.

Affidavit of Service of Citation (1).

State of —,

County of —, ss.

On this — day of —, 1894, personally appeared before me, a notary public in and for said county, —, and made oath that he delivered a copy of within citation to C. D.

Sworn to and subscribed before me this — day of —, 1894.

J. N.,

[Seal.]

Notary Public in and for the State
and County aforesaid.

(1) This affidavit may be used when service is not accepted. See No. 256.

No. 670.**Judgment.**

The United States Circuit Court of Appeals,
for the ——— Circuit.

No. ———. ——— Term, 189—.

A. B.	}	Judgment.
<i>vs.</i>		
C. D.		

Error to the District [*or*, Circuit] Court of the United States
for the ——— District of ———:

This cause came on to be heard on the transcript of the
record from the district [*or*, circuit] court of the United
States for the ——— district of ———, and was argued by
counsel.

On consideration whereof, it is now here ordered and ad-
judged by this court that the judgment of the said district
[*or*, circuit] court in this cause be and the same is hereby
affirmed [*or*, reversed, *as may be*], and this cause is remanded
for further proceedings to be had in said district [*or*, circuit]
court in accordance with this judgment.

ON APPEAL.

No. 671.

Petition on Appeal (1).

The Circuit Court of the United States, } In Equity.
 for the — District of —. } No. —.

The above-named plaintiff, [*or*, defendant], conceiving himself aggrieved by the decree made and entered on the — day of —, in the above-entitled cause, does hereby appeal from said order and decree to the United States circuit court of appeals for the — circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States circuit court of appeals for the — circuit.

Y. & Y.,

Dated —.

Attorneys for Plaintiff.

The foregoing claim of appeal is allowed.

H. F.,

Dated —.

Circuit Judge.

(1) See note No. 657.

No. 672.

Assignment of Error on Appeal (1).

The Circuit Court of the United States,
 for the — District of —.

A. B. } In Equity.
vs. } No. —.
 C. D. } Assignment of Error.

And now, on the — day of —, came the said plaintiff, by X. & X., his solicitors, and says that the decree in

said cause is erroneous and against the just rights of said plaintiff, for the following reasons:

First. Because the evidence showed that the mortgages in question were given to hinder, delay, and defraud the creditors of the P. F. Company.

Second. Because the evidence showed that the said mortgages amounted to and were in fact an assignment for the benefit of creditors, and were invalid so far as they undertook to make preferences.

Third. Because the evidence showed that the said mortgages amounted to and were in fact an assignment for the benefit of creditors, and were invalid, because they provided for returning the surplus to the mortgagor before all its debts were paid.

Fourth. Because the evidence showed that the said mortgages were preferential securities, given by the directors and managers of an insolvent corporation to secure debts on which they were personally liable, in violation of their fiduciary duty in the premises.

Wherefore the said plaintiffs pray that the said decree be reversed, and that the said court may be directed to enter a decree in accordance with the prayer of the bill.

X. & X.,
Solicitors for Plaintiffs.

(1) Taken from the transcript of record in *Brown vs. The Grand Rapids Parlor Furniture Company* in the Circuit Court of Appeals for the Sixth Circuit.

No. 673.

Bond on Appeal.

For form, see No. 662.

No. 674.**Citation on Appeal.**

No. 667 will furnish sufficient guide by substituting "appeal" for "writ of error," and "decree" for "judgment" therein.

See also Nos. 59 and 60.

No. 675.**Service of Citation.**

Consult Nos. 668 and 669.

No. 676.**Decree.**

The United States Circuit Court of Appeals,
for the ——— Circuit.

No. ———.

— Term, 189—.

A. B., Appellant, }
 vs. } Decree.
C. D., Appellee. }

Appeal from the district [*or*, circuit] court of the United States for the ——— district of ———.

This cause came on to be heard on the transcript of the record from the district [*or*, circuit] court of the United States for the ——— district of ———, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said district [*or*, circuit] court in this cause be, and the same is, hereby affirmed [*or*, reversed, *as may be*], and this cause is hereby remanded for further proceedings to be had in said district [*or*, circuit] court in accordance with this decree.

No. 677.**Decree Annulling Former Decree and Revoking a
Mandate (1).**

[*Caption.*]

On consideration of the motion made by Mr. S., on a prior day of the present term of this court, to wit, on Monday, the — day of —, and of the arguments of counsel thereupon had, as well against as in support of said motion, it is now here ordered, adjudged, and decreed that the judgment and decree of this court, rendered in the above-entitled cause, on the — day of —, 1894, be, and the same is hereby declared utterly null and void; and that the mandate of this court directed to the judges of said circuit court in this cause be, and the same is, hereby revoked. And it is also now here further ordered that the clerk of this court do forthwith send to the judges of the circuit court of the United States for the — district of —, a copy of this order of the court, under the seal of this court, together with a copy of the opinion of this court pronounced this day.

(1) *Ex parte Crenshaw*, 15 Pet., 124.

No. 678.**Order and Decree where the Court has no Juris-
diction (1).**

[*Caption.*]

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the — district of —, and was argued by counsel. On consideration whereof, it is the opinion of this court that said circuit court, from which this cause was removed, had no jurisdiction of this cause, and that consequently this court has not jurisdiction but for the purpose of reversing the decree of said circuit court. Whereupon it is now here ordered and decreed by this court that the decree of the said circuit court, entertaining jurisdiction of the cause, be, and the same

is, hereby reversed for the want of jurisdiction in that court ; and that this appeal be, and the same is, hereby dismissed for the want of jurisdiction ; and that this cause be, and the same is, hereby remanded to the said circuit court, with directions to proceed therein in conformity to the opinion of this court.

(1) *Cutter vs. Rae*, 7 How., 737.

No. 679.

Decree of Dismissal Framed to Prevent Prejudice.

[*Caption.*]

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of —, and was argued by counsel ; on consideration whereof this court is of opinion that the decree of the circuit court ought to have shown that the bill was dismissed because the deed therein mentioned, being void at law for matter apparent on its face, the plaintiff had not shown any circumstances which disclosed a case proper for the interference of a court of equity to relieve against such void deed. And this court is further of opinion that so much of the said decree as dismisses the bill with costs is erroneous, and ought to be reversed. This court doth therefore reverse and annul the said decree, and direct that the case be remanded to the said circuit court with directions to modify the same according to the principles of this decree.

No. 680.

Appeals in Admiralty.

For form of Notice, Petition, Order for Mandate, and Mandate on Appeal, in Admiralty, see Nos. 629 to 633.

MISCELLANEOUS ENTRIES, ORDERS, ETC.

No. 681.

Stipulation Reducing Record.

The Circuit Court of the United States, for the
 — District of —.

A. B., Plaintiff,

vs.

C. D., Defendant.

In the above-entitled case, it is hereby stipulated by the solicitors for the parties thereto that if an appeal be taken, the clerk, in making a transcript of the record may omit therefrom the following papers and records, to wit, [*here set forth the papers and records by name which are to be omitted,*] and that an order may be entered if the same to the court shall seem proper, in accordance with this stipulation.

Dated —. [To be signed by all the solicitors.]

No. 682.

Appearance (1).

The United States Circuit Court of Appeals,
 for the — Circuit.

No. —. — Term, 189 —.

A. B., Plaintiff in Error [*or*, Appellant],

vs.

C. D., Defendant in Error [*or*, Appellee].

The clerk will enter my appearance as counsel for the [*as may be*].

R. X.

(1) This must be signed by a member of the bar of the Supreme Court of the United States or of any Circuit Court of the United States. In the Supreme Court, must be signed by individual (not firm) name, and by one who is a member of the bar of that court.

No. 683.**Receipt for Record.**[*Caption.*]

Received this — day of —, from the clerk, a copy of the record herein as counsel for the defendant.

R. Y.,

— Counsel for Defendant.

No. 684.**Certificate of Questions by Circuit Judges to the Supreme Court.**

The United States Circuit Court of Appeals,
for the — Circuit.

A. B., Appellant, }
 vs. }
C. D., Appellee. }

Appeal from the Circuit Court of the United States for the — district of —.

This cause coming on for hearing before the court, after full argument, it is ordered, in view of the important questions arising upon the record, and the doubt which the court have as to the correct decision thereof, that [*three*] questions arising on said appeal shall be certified in the Supreme Court of the United States for its instruction thereon, and that accompanying said questions there shall also be certified a statement from which such questions can be understood; which statement and questions are as follows: [*here set forth statement and questions in full.*]

[*Signed by all the Judges.*]**No. 685.****Writ of Certiorari (1).**

The United States of America, ss.

The President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the — Circuit, Greeting:

Being informed that there is now pending before you a suit in which A. B. is plaintiff in error [*or, appellant*] and C.

D. is defendant in error [*or*, appellee], which suit was removed into the said circuit court of appeals by virtue of writ of error to [*or*, appeal from] the district [*or*, circuit] court of the United States for the — district of —, and we, being willing, for certain reasons, that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the supreme court of the United States, do hereby command you that you send without delay to the said supreme court, as aforesaid, the record and proceedings in said cause, so that the said supreme court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief
 [Seal.] Justice of the United States, the — day of
 —, in the year of our Lord one thousand
 eight hundred and ninety —. J. McK.,
 Clerk of the Supreme Court of the United States.

(1) See Act of Congress of March 3, 1891, Sec. 6.

No. 686.

Notice of Submission of Motions (1).

[Caption.]

To Messrs. R. X. and S. X., Counsel for Appellant:

Please take notice that on Monday, the — day of —, 1894, at the opening of the court, or as soon thereafter as counsel can be heard, the motions of which the foregoing are copies will be submitted to the supreme court of the United States for the decision of the said court thereon. Annexed hereto is a copy of the brief of argument to be submitted with the said motions in support thereof. R. Y.,

Counsel for the Appellee for the Purposes
 of these Motions.

(1) See 6th U. S. Supreme Court Rule, Clause 3.

No. 687.**Motion to Dismiss (1).**

The United States Circuit Court of Appeals,
for the ——— Circuit.

A. B. }
vs. } Motion to Dismiss.
C. D. }

And now comes the defendant in error [*or*, appellee], and moves the court to dismiss the writ of error [*or*, appeal] herein for the following reasons [*here set forth the grounds upon which the motion is based*].

R. Y.,

Counsel for ———.

(1) Notice of this motion should be served upon the opposite counsel in the case before the same is heard.

No. 688.**Motion to Dismiss or to Affirm.**

The Supreme Court of the United States,
for the ——— Term, 189—.

A. B., Appellant,

vs.

C. D., Appellee.

Comes now the appellee, by his counsel appearing in that behalf, and moves the court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because the judgment or decree from which the said appeal purports to have been taken is the judgment or decree of the supreme court of one of the United States, to wit, the supreme court of the state of ———.

And the said appellee, by counsel as aforesaid, also moves the court to affirm the said judgment or decree from which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that said appeal was taken for delay only.

R. Y.,

Counsel for Appellee for the Purposes
of these Motions.

No. 689.**Order Dismissing Cause on Motion Filed.**

The United States Circuit Court of Appeals,
for the ——— Circuit.

No. ———. ——— Term, 189—.

A. B. }
vs. } Order Dismissing Cause on Motion Filed.
C. D. }

Error to [*or*, appeal from] the district [*or*, circuit] court of the United States for the ——— district of ———.

This cause having been called for hearing in its regular order, and a motion by counsel for the plaintiff in error [*or*, defendant in error, *or*, appellant, *or*, appellee, *as may be*] to dismiss this cause having been filed, therefore, in pursuance of said motion, it is now here ordered and adjudged (and decreed) by this court, that the writ of error [*or*, appeal] be, and the same is, hereby dismissed.

No. 690.**Order Dismissing Case on Call.**

The United States Circuit Court of Appeals,
for the ——— Circuit.

No. ———. ——— Term, 189—.

A. B. }
vs. } Order Dismissing Case on Call.
C. D. }

Error to [*or*, appeal from] the district [*or*, circuit] court of the United States for the ——— district of ———.

This cause having been called in its order, and no one appearing for the plaintiff in error [*or*, appellant], therefore, it is now here ordered and adjudged (and decreed) by this court, that the said writ of error [*or*, appeal] be, and the same is hereby dismissed at the cost of plaintiff [*or*, appellant].

No. 691.**Order Dismissing Cause for Failure to Print (1).**

The United States Circuit Court of Appeals,
for the ——— Circuit.

No. ———. ———, Term, 189 —.

A. B. }
vs. } Order dismissing cause for failure to print.
C. D. }

Error to [*or*, appeal] from the ——— district [*or*, circuit] court of the United States, for the ——— District of ———.

This cause being called for hearing in its regular order, and it appearing to the court that the parties have failed to print the transcript of the record, it is thereupon, in pursuance of the 23d rule of this court, now here ordered and adjudged (and decreed) by this court that the writ of error [*or*, appeal] be, and the same is hereby dismissed, at the costs of the plaintiff in error [*or*, appellant].

(1) See 23d rule, Circuit Court of Appeals.

No. 692.**Order Dismissing Cause under Rule (1).**

The United States Circuit Court of Appeals,
for the ——— Circuit.

No. ———, ——— Term, 189 —.

A. B., Plaintiff in Error [*or*, Appellant], }
vs. } Order
C. D., Defendant in Error [*or*, Appellee]. } dismissing
cause.

Error to [*or*, appeal from] the District [*or*, Circuit] Court of the United States for the ——— district of ———.

This cause came on to be heard on the transcript of the record from the district [*or*, circuit] court of the United States for the ——— district of ———, and the plaintiff in error [*or*, appellant] having been three times solemnly called by the marshal to come into court and prosecute said writ of

(1) 16th U. S. Supreme Court Rule, and 22d Rule Circuit Court of Appeals.

Habeas Corpus.

For forms of appellate proceedings in the matter of *habeas corpus*, see Nos. 529 to 531.

Certificate by Clerk under 9th Rule of the Supreme Court.

The United States Circuit Court of Appeals
for the ——— Circuit.

A. B., Plaintiff in Error [*or*, Appellant],
vs.

C. D., Defendant in Error [*or*, Appellee].

The United States of America,

— Circuit, ss:

I, S. F., clerk of the United States circuit court of appeals for the — circuit, do hereby certify that on the — day of —, 1894, an order was entered herein by the circuit court of appeals for the — circuit, directing a mandate to issue to the circuit court of the United States for the — district of —, affirming a judgment of said circuit court entered in the clerk's office of said court on the — day of —, 1894, and that on the — day of —, 1894, a writ of error for the review of said order by the supreme court of the

United States was duly sued out by A. B., and allowed by the honorable E. H., circuit judge, and issued from the clerk's office of the United States circuit court of appeals for the ——— circuit, which writ of error was returnable in the supreme court of the United States on ———, 1894; that on or about the same day a bond as security for the costs upon said writ of error and a citation for the said return day were duly approved and signed by the said circuit judge, which writ of error, citation, and bond were duly served on the attorney for the defendant in error on ———, 1894.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of ———, in the ——— circuit, this ——— day of ———, in the year of our Lord 1894, and of the independence of the said United States the one hundred and eighteenth.

S. F.,

[*Seal.*]

Clerk of the U. S. Circuit
Court of Appeals for the
——— Circuit.

No. 695.

Mandate.

The United States of America, ss.

The President of the United States of America to the Honorable the Judges of the [*name of court below*], Greeting:

Whereas, lately in the [*name of court below*], before you, or some of you, in a cause between A. B., plaintiff, and C. D., defendant, judgment was rendered in the words following, to wit, [*here set forth the judgment*], as by the inspection of the transcript of the record of the said [*court below*] court, which was brought into the supreme court of the United States by virtue of a writ of error [*or, appeal, as may be*], agreeably to the act of congress in such case made and provided, fully and at large appears. And whereas in the present term of October, in the year of our Lord one thousand eight hundred and

ninety —, the said cause came on to be heard before the said supreme court of the United States [*or*, United States circuit court of appeals for the — circuit] on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the judgment [*or*, decree] of the said [*court below*] court in this cause be and the same is hereby affirmed [*or*, reversed, *as may be*], with costs. [*Here add the directions, if any, to the court below, or further relief to either party as costs or damages, etc.*]

You, therefore, are hereby commanded that such [*state directions, as "execution," etc.*], and proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said writ of error [*or*, appeal] notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the — day of —, in the year of our Lord one thousand eight hundred and ninety —.

Costs of	}	J. K.,
Clerk \$. . .		Clerk of the Supreme Court
Printing Record . \$. . .		of the United States [<i>or</i> ,
Attorney \$. . .		U. S. Circuit Court of Ap-
\$. . .		peals for the — Circuit].

No. 696.

Mandate (1).

The United States of America, ss.

The President of the United States of America to the President of the Senate of the State of New York, the Senators, Chancellor and Justices of the Supreme Court of the said State, being the Judges of the Court for the Trial of Impeachments and Correction of Errors, holden in and for the State of New York, Greeting:

Whereas, lately in the court for the trial of impeachments and correction of errors, holden in and for the state of New

York, before you, or some of you, in a cause between Charles A. Davis, plaintiff in error, and Isaac Packard, Henry Disdier, and William Morphy, defendants in error, the judgment of the said court for the trial of impeachments and correction of errors was in the following words, to wit:

"Therefore it is considered by the said court for the correction of errors that the judgment of the supreme court aforesaid be and the same is hereby in all things confirmed. It is further considered that the said defendants in error recover against the plaintiffs in error their double costs, according to the statute in such case made and provided, to be taxed in defending the writ of error in this cause, and also interest on the amount recovered, by way of damages," as by the inspection of the transcript of the said court for the trial of impeachments and correction of errors, which was brought into the supreme court of the United States by virtue of a writ of error, agreeably to the act of congress in such case made and provided, fully and at large appears. And whereas, in the present term of January, in the year of our Lord one thousand eight hundred and thirty-three, the said cause came on to be heard before the said supreme court on the said transcript of the record, and was argued by counsel, on consideration whereof it is the opinion of this court that the plaintiff in error, being consul-general of the king of Saxony, exempted him from being sued in the state court, by reason whereof the judgment rendered by the court for the trial of impeachments and correction of errors is erroneous. Whereupon it is ordered and adjudged by this court that the judgment of the said court for trial of impeachments and correction of errors be and the same is hereby reversed; and that this cause be and the same is hereby remanded to the said court, with direction to conform its judgment to the opinion of this court.

You, therefore, are hereby commanded that such further proceedings be had in said cause as according to right and justice, and in conformity to the opinion and judgment of said

supreme court of the United states, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness the Honorable John Marshal, Chief Justice of said supreme court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-three.

[Seal.]

William Thomas Carroll,
Clerk of the Supreme Court of the
United States.

(1) From Davis *vs.* Packard, 8 Peters, 312, 314-16.

No. 697.

Petition for Writ of Certiorari to a Circuit Court of Appeals (1).

In the Supreme Court of the United States,
— Term, 18—.

Ex parte Lau Ow Bew, Petitioner.

Petition for Writ of Certiorari, requiring the Circuit Court of Appeals for the Ninth Circuit to certify to the Supreme Court for its review and determination the case of Lau Ow Bew, Appellant, *vs.* The United States, Respondents.

To the Honorable the Supreme Court of the United States:

The petition of Lau Ow Bew respectfully shows to this honorable court as follows:

First. Your petitioner is a person of the Chinese race, and a natural-born subject of the Emperor of China; but he is now, and for the past seventeen years has been, a resident of the United States of America, and of no other country, having his domicile in the city of Portland, in the state of Oregon; and during all that time he has been a merchant engaged in the wholesale and importing business, as a member of the well-known commercial firm of Hop Chong & Co., in the said city of Portland.

Second. Your petitioner, on the 30th day of September, 1890, departed from the United States on a temporary visit to his relatives in China, with the intention of returning as soon as possible, and he did return to the United States on board of the steamship Oceanic, which arrived at the port of San Francisco, in the state of California, on the 11th day of August, 1891. At the time of his departure he procured satisfactory evidence of his status in this country as a merchant, under the regulations of the treasury department of the United States, adopted July 3, 1890, one of which is as follows:

“Chinamen who are not laborers, and who may have heretofore resided in the United States, are not prevented by the existing laws or treaty from returning to the United States after visiting China or elsewhere. No certification, or other papers, however, are issued by the department, or by any of its subordinate officers, to show that they are entitled to land in the United States, but it is suggested that such parties should, before leaving the United States, provide themselves with such proofs of identity as may be deemed proper, showing they have been residents of the United States, and that they are not laborers, so that they can present the same to, and be identified by, the collector of customs at the port where they may return.”

Third. Your petitioner, on his return to the United States, presented said proofs to the collector of the port of San Francisco; but the collector, while acknowledging the sufficiency of the same, and admitting that your petitioner was a merchant domiciled herein, and, therefore, entitled to the protection of the treaty between the United States and China, concluded July 28, 1868, popularly known as the Burlingame Treaty, and the supplemental treaty between the said governments, concluded November 17, 1880, and the act of congress entitled “An act to execute certain treaty stipulations relating to Chinese,” approved May 6, 1882, as amended July 5, 1884, refused to permit your petitioner to land, on

the sole ground that he failed and neglected to produce the certificate of the Chinese Government, mentioned in Section 6 of the said act of May 6, 1882, as amended by the said act of July 5, 1884; and the collector based this refusal upon the opinion of this honorable court in the case of *Wan Shing vs. United States*, No. 1414, October term, 1890, decided May 11, 1891.

Fourth. Your petitioner thereupon, to wit, on August 14, 1891, filed a petition in the circuit court of the United States for the northern district of California for a writ of *habeas corpus*, to obtain his discharge from detention, alleging, *inter alia*, that he was a merchant domiciled in the United States for seventeen years last past, and that it was claimed by the master of the said steamship that he could not be allowed to land under the provisions of the sixth section of the said act of May 6, 1882, as amended by the said act of July 5, 1884.

The writ was issued directed to the master of the said steamship, who produced the body of your petitioner before the said court on the 15th day of August, 1891, and made return to the writ that he held the petitioner in his custody "by direction of the customs authorities of the port of San Francisco, California, under the provisions of the Chinese Restriction Act."

The United States district attorney filed an intervention for and on behalf of the United States, and made opposition to the said writ. It was not alleged or pretended, in such intervention on behalf of the United States, that your petitioner was a laborer, or that the refusal of the customs officers at San Francisco to allow him to land, and his consequent detention by the master of the said steamship, were based upon the provisions of the Chinese Exclusion Act of October 1, 1888; but on the contrary it was averred, in said intervention, that your petitioner was lawfully detained by the said master because he was a Chinese person, and failed to produce to the collector of customs, or to any other

authorized officer the certificate of identification required by the said act of 1882 as amended by the said act of 1884.

An answer or traverse to the said return to the said writ, and the said intervention on behalf of the United States, was filed by the petitioner.

The said case was and is entitled and numbered in the circuit court of the United States for the northern district of California "In the Matter of Lau Ow Bew on *Habeas Corpus*, No. 11415."

Fifth. The said case was heard and determined by the said circuit court upon an agreed statement of facts, signed by the United States district attorney and the attorneys for the petitioner, and filed therein, which statement of facts is as follows:

It is hereby stipulated and agreed that the following are the facts herein:

"*First.* That the said Lau Ow Bew is now on board the steamship Oceanic, which arrived in the port of San Francisco, state of California, on the 11th day of August, A. D., 1891, from Hong Kong, and is detained and confined thereon by Captain Smith, the master thereof.

"*Second.* That the said passenger is now and for seventeen years last past has been a resident of the United States and domiciled therein.

"*Third.* That during all of said time the said passenger has been engaged in the wholesale and importing mercantile business in the city of Portland, state of Oregon, under the firm name and style of Hop Chong & Co.

"*Fourth.* That the said firm is worth \$40,000, and said passenger has a one-fourth interest therein, in addition to other properties.

"*Fifth.* That the said firm does a business annually of \$100,000, and pays annually to the United States government large sums of money, amounting to many thousands of dollars, as duties upon imports.

"*Sixth.* That on the 30th day of September, A. D. 1890, the said passenger departed from this country temporarily

on a visit to his relatives in China, with the intention of returning as soon as possible to this country, and returned to this country by the steamship Oceanic on the 11th day of August, A. D. 1891.

"*Seventh.* That at the time of his departure he procured satisfactory evidence of his status in this country as a merchant, and on his return hereto he presented said proofs to the collector of the port of San Francisco, but said collector, while acknowledging the sufficiency of said proofs and admitting that the said passenger was a merchant domiciled herein, refused to permit the said passenger to land on the sole ground that the said passenger failed and neglected to produce the certificate of the Chinese government mentioned in Section 6, of the Chinese Restriction Act of May 6, 1882, as amended by the act of July 5, 1884.

"Charles A. Carter,

"U. S. District Attorney.

"Harvey S. Brown and

"Thomas D. Riordan,

"Attorneys for Petitioner."

Sixth. Such proceedings were had in the said case in the said circuit court of the United States, that on the 11th day of September, 1891, the said court rendered a judgment therein as follows:

"This matter having been regularly brought on for hearing before the court and the judge thereof, the United States attorney having appeared and intervened on behalf of the United States, and the same having been duly heard and submitted, and due consideration thereon had, it is by the court now here considered—

"That Lau Ow Bew, in whose behalf the writ of *habeas corpus* herein was sued out, was not at the date of the petition herein illegally restrained of his liberty as therein alleged.

"It is further adjudged and found that he came from China by the steamship Oceanic, and is a Chinese person

forbidden by law to land within the United States, and has no right to be or remain therein.

"It is therefore ordered that the said Lau Ow Bew be remanded by the United States Marshal for the Northern District of California to the custody whence he was taken, to wit; on board the said steamship to the custody of the master of said steamship, or, in case of a change of master, to the custody of the master thereof, whoever he may be, at the time of this order of remand; or to place him in the hands and charge of any party on board of said steamship for the time being representing the master, or then in charge of said steamship in the absence of the master, or for the time being exercising control or authority thereon; this order to be executed as to said steamship whether still in port, not having departed therefrom, or having departed and returned since the proceedings herein were instituted. And in case said steamship has departed and not returned, or for any other reason, the said Lau Ow Bew can not be placed on said steamship, that the said marshal place him upon any other vessel available for the purpose, paying the necessary passage money, for the purpose of deporting him out of the United States and transporting him to the port whence he came. And for the purpose of carrying this order into effect it is further ordered that the said marshal shall take the said Lau Ow Bew into their custody, and him safely keep till said order shall be fully executed."

Seventh. The said case of your petitioner, in the said circuit court of the United States, was heard before and decided by the Hon. W. H. Beatty, district judge of the United States for the district of Idaho, sitting in the said court, and the opinion of the court was delivered by him.

Eighth. Your petitioner, on the same day, was duly allowed by the said circuit court an appeal from its said judgment to the United States circuit court of appeals for the ninth circuit, and it was ordered by the court that a certified transcript of the record and of all proceedings in

the said case be forthwith transmitted to the said United States circuit court of appeals.

Ninth. On the 3d day of October, 1891, a certified transcript of the record and of all proceedings of the said circuit court, in the said case, was filed in the United States circuit court of appeals for the ninth circuit, and the said case was entered and docketed in the said court of appeals, and entitled "Lau Ow Bew, appellant, *vs.* The United States, respondent, No. 12."

The assignment of errors filed on behalf of your petitioner was as follows :

"Afterwards, to wit, on the first Monday in October, in the same term, before the judges of the circuit court of appeals for the ninth circuit, at the city of San Francisco, in the district of California, comes the said Lau Ow Bew, appellant, by Harvey S. Brown, and Thomas D. Riordan, his attorneys, and says that in this record aforesaid there is manifest error in this, to wit :

"That the circuit court of the ninth judicial circuit, in and for the district of California, erred in deciding—

"1. That the appellant is not entitled to enter the United States.

"2. That he is not unlawfully restrained of his liberty.

"3 That the said appellant was required to produce the certificate required by Section 6 of the act known as the Chinese Restriction Act, passed May 6, 1882, as amended July 5, 1884.

"4. That a Chinese merchant domiciled in the United States and departing therefrom temporarily with the intention of returning should, before being permitted to reenter the United States, produce the certificate required by Section 6 of the act above referred to.

"5. That he be remanded to the custody of the master of the steamship whence he was taken.

"And the said Lau Ow Bew prays that the said judgment entered herein against him be reversed, annulled, and alto-

gether held for nothing, and that he be restored to all things which he has lost by occasion of the said judgment.

“Harvey S. Brown and

“Thomas D. Riordan,

“Attorneys for Appellant.”

Tenth. The case came on to be heard in the said circuit court of appeals on the 5th day of October, 1891, before the Hon. E. M. Ross, United States district judge for the southern district of California, and the Hon. Thomas P. Hawley, United States district judge for the district of Nevada; and on the 7th day of October, 1891, the said court rendered a judgment affirming the said judgment of the said circuit court therein, as follows:

“Appeal from the circuit court of the United States for the northern district of California.

“This cause came on to be heard on the transcript of the record from the said circuit court of the United States for the northern district of California, and was argued by counsel, and the same having been duly considered, and the opinion of the court having been read in open court and filed with the clerk, it is ordered that the judgment of the said circuit court be and the same hereby is affirmed, and the cause remanded to said circuit court at the cost of the appellant.

“On motion of Thomas D. Riordan, Esq., counsel for appellant, it is ordered that a stay of proceedings herein be and the same hereby is granted for and during the space of thirty days.”

A certified copy of the entire record of the said case in the said circuit court of appeals is herewith furnished, and hereto annexed, as part of this application, in conformity with rule 37 of this honorable court relative to cases from circuit court of appeals, and the same is marked exhibit “A.”

Eleventh. Your petitioner is advised and believes that the said judgment of the United States circuit court of appeals in the said case is erroneous, and that this honorable court should require the said case to be certified to it for its re-

view and determination under and in conformity with the provisions of the sixth section of the act of congress entitled "An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, the said case being made final in the said circuit court of appeals by the said act.

Twelfth. The said case was decided in the said circuit court of appeals, as well as in the said circuit court, upon the supposed authority of the decision of this honorable court in the said case of Wan Shing *vs.* United States, but the question presented by and involved in the said case of the petitioner was not presented by or involved in the said case of Wan Shing *vs.* United States, and the said question was not decided in that case, nor was the decision of the same necessary for the determination of that case by this honorable court.

Your petitioner is informed and believes that the question presented by and involved in his said case was not discussed in any wise by counsel before this honorable court in the said case of Wan Shing *vs.* United States.

Thirteenth. It appears in the said agreed statement of facts, and it is thus admitted in this case by the government of the United States, that the petitioner is, and has been for seventeen years last past, a Chinese merchant domiciled and doing business in the United States; that he departed therefrom September 30, 1890, on a temporary visit to his relatives in China, with the intention of returning as soon as possible, and did return on August 11, 1891; that he was not prevented from landing by the authorities of the government of the United States upon any claim or pretense that he was a laborer, excluded by the provisions of the act of October 1, 1888; and that he was refused permission to land on the sole ground that he failed "to produce the certificate of the Chinese government, mentioned in section six of the Chinese Retriktion Act of May 6, 1882, as amended by the act of July 5, 1884."

The question thus presented by the record in the case of your petitioner was, and is, whether he is entitled, as a Chinese merchant, long domiciled in the United States, who had departed therefrom in September, 1890, for a temporary purpose, to re-enter the country without producing the certificate in section six of the Chinese Restriction Acts.

Fourteenth. This honorable court declared in the said case of Wan Shing *vs.* United States, that the refusal to allow the petitioner therein to land was not grounded at all upon the said act of May 6, 1882, but was based wholly upon the provisions of the Chinese Exclusion Act of October 1, 1888, which declared that it should be unlawful for any Chinese laborer, who, at any time before had been, or was then, or might thereafter be, a resident within the United States, or who had departed or might depart therefrom, and should not have returned before its passage, to return or remain in the United States.

It was thus claimed and maintained by the authorities of the United States, in the said case, that the said Wan Shing was a laborer, and lawfully detained as such, and that he was not a Chinese merchant, or within the exempt class when he sought to enter the United States.

It appeared affirmatively, by the testimony of Wan Shing, as your petitioner is advised, that he was a youth only seventeen years of age when he claimed to have been in the United States, and that he was, in fact, a laborer, and not a merchant, within the meaning of the treaties between the United States and China, and the Chinese Restriction Acts; that he first came to the United States in 1879, and departed therefrom in 1882; and that he did not return to, and seek to enter the United States until 1889. And there was no evidence in the said case, as your petitioner is advised, that Wan Shing, at the time of his departure from the United States, intended ever to return to the country, or to retain his domicile therein, if he ever had one.

Fifteenth. The petitioner is advised that the right of a Chinese merchant, admitted to be domiciled in the United

States, and to have been domiciled therein for many years, who temporarily departed therefrom in the year 1890, *animo revertendi*, to re-enter the country without producing a certificate of identity, under the sixth section of the said act of 1882, as amended in 1884, was not drawn in question in the said Wan Shing case.

Sixteenth. Your petitioner is informed and believes that the case of Wan Shing *vs.* United States, being No. 1414 on the docket of this court for the October term, 1890, and advanced on the motion of the attorney general, was submitted without argument of any kind on behalf of the appellant, and upon a printed brief of Mr. Assistant-General Parker in the part of the United States; and that no assignment of errors was filed in the case by the counsel for the appellant, who did not appear in court when the case was called for trial, and who telegraphed from San Francisco to the clerk of this court that the case might be submitted upon the record. The appeal, in that case, was thus, as the petitioner is advised, virtually abandoned by the counsel for the appellant; and the petitioner is also informed and believes that substantially the only proposition in the brief for the United States, in the said case, was that the testimony in the record showed that Wan Shing was a laborer, and as such was not entitled to land under the provisions of the Exclusion Act of October 1, 1888.

Seventeenth. The importance and gravity of the question as to the rights of Chinese merchants domiciled in the United States, under the treaties between the United States and China, and the legislation of the United States to execute those treaties, will be recognized when it is stated, according to authentic statistics, that the Chinese merchants who are now domiciled in the United States are the owners and in possession of real and personal property valued at over \$20,000,000; that they pay annually to the United States government large sums of moneys as duties upon imports aggregating more than two millions of dollars; that nearly

all of said merchants have branch houses in British Columbia, Cuba, Mexico, Peru, and the Hawaiian Islands; and that they are constantly and necessarily traveling between the United States and those countries for the purpose of collecting moneys due to them, and attending to their various interests in their branch houses therein. If such Chinese merchants, when visiting those countries, are obliged to produce certificates of identity under the restriction acts, in order, after such temporary absences, to re-enter the United States, they would be required, before returning thereto, to proceed to China, and there attempt to procure such certificates. It is manifest, however, that it would be impossible for those Chinese merchants who have been long domiciled in the United States to obtain the required certificate, because the Chinese government could not certify to the facts necessary to be set forth in them, nor could the proper diplomatic or consular representatives of the United States ascertain the truth in regard to such facts for the purpose of viseing and indorsing such certificates as provided by law.

Eighteenth. Before the promulgation of the opinion of this honorable court in the said case of Wan Shing *vs.* United States, by the treasury department of the government of the United States, in August, 1891, and thus before the petitioner went to China, in September, 1890, it had been uniformly held by that department that Section 6 of the Chinese restriction act of May 6, 1882, as amended by act of July 5, 1884, was not applicable to Chinese merchants domiciled in the United States, and who had departed therefrom temporarily, and that they might lawfully return upon the production of such evidence as should be satisfactory to the various collectors, of their status as resident merchants in the United States.

The first decision was rendered by the Hon. Charles J. Folger, on March 14, 1884; the second by the Hon. W. Q. Gresham, on September 25, 1884; the third by the Hon. H. F. French, on December 2, 1884; the fourth, fifth, and sixth

by the Hon. Hugh McCulloch, respectively, on December 6, 1884, December 27, 1884, and January 14, 1885.

The question, also, came before the United States circuit court for the northern district of California on April 9, 1885, in the case of Ah Ping (reported in 11 Sawyer, 17), and it was there decided the same way; and thereafter the said treasury department, on November 8, 1888, and July 3, 1890, reaffirmed its previous rulings upon the subject.

The said decisions were thus all made before the petitioner left the United States to visit his relatives in China.

Nineteenth. Under the said decisions Chinese merchants domiciled in the United States were accustomed to go and come under the treaties between the United States and China upon the production, on their return to this country, of such evidence of their status as was deemed satisfactory by the several collectors of the ports; and the records of custom-houses will show, as the petitioner is informed and believes, that such practice was not attended by fraud.

Twentieth. To require Chinese merchants domiciled in the United States, whenever they may depart therefrom temporarily with the intention of returning thereto, to produce certificates from the Chinese government in order to enable them to re-enter the United States, would seem to be equivalent, as has been observed, to an absolute refusal to permit their return, whereas the treaty between the United States and China of November 17, 1880, guarantees to such merchants the right "to go and come of their own free will and accord."

Twenty-first. Your petitioner thus respectfully submits that the question upon the legal and just construction and effect of the said Chinese Restriction Acts, involved in and presented by the said case of your petitioner, should be authoritatively and finally adjudged by this honorable court upon and after a full presentation to the court of the merits of the said question on the part of the petitioner and the United States.

Wherefore your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this court, directed to the United States circuit court of appeals for the ninth circuit, commanding the said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said circuit court of appeals in the said case therein entitled Lau Ow Bew, appellant, *versus* The United States, respondents, No. 12, to the end that the said case may be reviewed and determined by this court, as provided in Section 6, of the act of congress entitled "An act to establish circuit courts of appeals, and to define and to regulate, in certain cases, the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with the said act, and that the said judgment of the said circuit court of appeals in the said case, and every part thereof, may be reversed by this honorable court.

And your petitioner will ever pray, etc.

Lau Ow Bew,
By Thomas D. Riordan,
Attorney and Counsel for Petitioner.

J. Hubley Ashton,
Thomas D. Riordan,
of Counsel for Petitioner.

(1) From the record *in re* Law Ow Bew, 141 U. S., 583.

See Act of May 6, 1882, 22 Stat. at L., Chap. 126; Act of July 5, 1884, 23 Stat. at L., Chap. 220; and Act of Oct. 1, 1888, 25 Stat. at L., 584, for a review of the laws relating to Chinese immigration. See note to Act of Oct. 1, 1888, in Sup. R. S., Vol. I, p. 625. See also Chae Chan Ping *vs.* U. S., 130 U. S., 581; Wan Shing *vs.* U. S., 140 U. S., 424.

No. 698.**Verification of the above Petition (1).**

District of Columbia,

City of Washington, ss.

Thomas D. Riordan, being duly sworn, says that he is one of the attorneys and of counsel for Lau Ow Bew, the petitioner above named, and as such had personal charge for him of the case in the foregoing petition mentioned in the circuit court of the United States for the northern district of California, and in the United States circuit court of appeals for the ninth circuit; that he has read the said petition by him subscribed, and that the facts therein stated are true to the best of his information and belief.

Thomas D. Riordan.

Sworn to and subscribed before me this 29th day of October, 1891.

E. L. White, Notary Public,

[Seal.]

District of Columbia.

(1) From record *in re* Lau Ow Bew, 141 U. S., 583.

No. 699.**Order on Petition for Writ of Certiorari.**

[Caption.]

On a Petition for a Writ of *Certiorari* to the United States Circuit Court of Appeals for the — Circuit.

On consideration of the petition for a writ of *certiorari* herein to the United States circuit court of appeals for the — circuit, and of the argument of counsel thereupon had, as well in support of as against the same, it is now here ordered by the court that said petition be and the same is hereby granted [*or as may be*].

THE SUPREME COURT OF THE UNITED STATES.

ORIGINAL JURISDICTION.*

No. 700.

**Bill by Foreign Consul (1) against a Citizen of the
United States.**

In the Supreme Court of the United States.

A. B., Plaintiff, }
 vs. }
C. D., Defendant. }

A. B., a resident of the city of —, in the state of —, but an alien, and a consul of the republic of France for the city of —, duly appointed and accredited by the government of the republic of France, and duly recognized as such by the government of the United States of America, brings this his bill against C. D., of —, in the state of —, who is a citizen of that state. Thereupon your orator complains and says: [*Set forth the cause of action.*]

(1) The Supreme Court has original jurisdiction "in all cases affecting ambassadors, other public ministers, and consuls." Constitution of United States, Art. III., Sec. 2.; R. S., Sec. 687.; Cooley's Const. Law, p. 112, and Gould & Tucker's Notes to the Revised Statutes, p. 136.

No. 701.

**Bill by one State against another to Settle the
Boundary (1).**

In the Supreme Court of the United States.

[*Caption.*]

The state of Missouri, by Robert A. Hatcher, her agent and attorney, duly appointed and commissioned in pursuance

*For appellate forms in supreme court see Appellate Proceedings, page 613.

of law, states that a controversy has arisen between said state and the state of Kentucky, respecting the boundaries of said states, and the said state of Missouri complains that said state of Kentucky, since the first of January, 1857, has unlawfully claimed, and exercised jurisdiction over Wolf Island, an island in the Mississippi river, forming part of the territory of said state of Missouri; that said states are severally bounded at the point in question by the main channel of said river, and the island was, at the time said boundaries were fixed, and still is, on the western, or Missouri, side of the said channel.

Wherefore plaintiff prays that said state of Kentucky may be made a defendant to this bill, and permitted to answer the same; that upon a final hearing of said cause, the boundary herein claimed may be ascertained and established by the decree of this court, and that the rights of possession, jurisdiction, and sovereignty of said state of Missouri thereto be quieted, and the defendant forever enjoined and restrained from disturbing said plaintiff, her officers, or people in the full possession and enjoyment of the same; and the plaintiff prays such other and further relief as the nature of the case requires, and to equity belongs; and plaintiff will ever pray, etc.

R. Y.,

Agent and Solicitor for Plaintiff.

(1) The Supreme Court has original jurisdiction in cases in which a state is a party. See Constitution of the United States, Art. III., Sec. 2; R. S., Sec. 687; Gould & Tucker's Notes to the Revised Statutes, p. 136; Cooley's Const. Law, p. 112.

No. 702.

Bill for the Settlement of a Boundary Between States

(1). (Another Form).

[Caption].

To the Judges of the Supreme Court of the United States.*

The State of Rhode Island, one of the United States of America, brings this bill against the State of Massachusetts, also one of the United States of America.

And thereupon your orator complains and says that on the third day of November, 1621, King James the First granted a charter to the council of Plymouth, for planting, ruling, ordering, and governing New England, in America, in which were described the boundaries of the territory so granted, as follows: [*here describe the boundaries*].

That afterwards, to wit, on the fourth day of March, 1629, King Charles the First incorporated by letters patent "The Governor and Company of Massachusetts Bay, in New England," and the council at Plymouth conveyed to them by deed the lands above described.

Copies of said charters and deed are hereto annexed, marked A, B, C, respectively, and your orator prays that they may be made a part hereof, as your orator will be prepared and prove the same.

Your orator further states that afterwards, on the eighth day of July, 1763, King Charles the Second, by letter patent, granted a charter of incorporation to William Brenton, John Coddington, and others, by the name of "The Governor and Company of the English Colony of Rhode Island and Providence Plantations, in New England, in America," and granted and conferred to the corporation, by letters patent, all that part of New England, in America, containing, etc., bounded on the north or northerly by the aforesaid south or southerly line of Massachusetts colony or plantation, etc.

Your orator further states that the province and colony of Massachusetts Bay, and of Rhode Island and Providence Plantations, thus established, continue under the charts and letters patent aforesaid, with the boundary line between them as aforesaid, unchanged until the fourth day of July, 1776, when, with their sister colonies, they became independent states of the Union.

Your orator further states that the true boundary line between the State of Rhode Island and Providence Plantations, and the Commonwealth of Massachusetts, by virtue of the charters aforesaid from the English Crown, is a line run east

and west three miles south of Charles river, or any or every part thereof.

Your orator further states that the Commonwealth of Massachusetts holds possession to a line eight miles south of Charles river, or any part thereof, and one that does not run east and west, but south of a west and north of a northeast course; that the territory between this line and the one above described belongs to the State of Rhode Island, and that the defendant unjustly withholds the possession thereof from her and exercises acts of sovereignty over it.

Your orator further states that in consequence of various disputes and controversies about the boundary between the two colonies, and subsequently between said states, numerous efforts were made to adjust the same; that about the year —, commissioners were appointed by the legislatures of said colonies respectively for the purpose of ascertaining and settling said boundary, but they were never able to agree upon or settle the same.

Your orator further states that the defendant herein claims that the boundary line was settled and adjusted by said commissioners acting for the two colonies and under the authority of the colonies respectively, and that this settlement has been acquiesced in by the plaintiff. But your orator states that there were errors in the proceedings of the said commissioners; that they were misinformed and mistaken as to a monument alleged to have been set up long anterior to the appointment of said commissioners, by Nathaniel Woodward and Solomon Caffrey, and which they fixed upon and assumed to be on the boundary line three miles south of any part of Charles river, without any actual survey or measurements, etc.; that the line thus fixed upon was in fact eight miles south of any part of Charles river, and has always been objected to and resisted by the plaintiff, and never acquiesced in as the true boundary line between said states; that the agreement of the said commissioners was not accepted or ratified by the plaintiff; that no stake or monument existed

on said line as assumed by said commissioners ; and that she never admitted any line as the true boundary, except the one called for by the charters aforesaid.

Wherefore the complainant prays that the said defendant may be required to answer the matters set forth in this bill ; that the northern boundary line between the plaintiff and the state of Massachusetts may, by the order and decree of this honorable court, be ascertained and established ; that possession and rights of jurisdiction and sovereignty to the whole tract of land, with the appurtenances mentioned, described, and granted in and by the said charter or letters-patent to the said colony of Rhode Island and Providence Plantations, hereinbefore set forth, and running on the north by an east and west line drawn three miles south of the waters of said Charles river or of any and every part thereof, may be restored and confirmed to the plaintiff ; that the plaintiff may be quieted in the full and free enjoyment of her possession, jurisdiction, and sovereignty over the same, and the title, possession, jurisdiction, and sovereignty of Rhode Island and Providence Plantations over the same be confirmed and established by the decree of this court ; and that the plaintiff may have such other and further relief in the premises as to the court shall seem meet and consistent with equity and good conscience.

May it please your honors to grant unto your orator a writ of subpœna under the seal of this honorable court, directed to the governor and attorney-general of the state of Massachusetts, commanding them, on a day certain to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer, on behalf of said state, all and singular the premises, and on behalf of said state stand to perform and abide such further order, direction, and decree as may be made against said state.

And your orator will ever pray, etc.

R. X.,

Solicitor for Plaintiff.

S. X., of Counsel.

No. 703.**Subpœna in a Suit by one State against another.***[Caption.]*

The President of the United States to the Governor and Attorney-General of the State of —, Greeting:

For certain causes offered before the supreme court of the United States holding jurisdiction in equity, you are hereby commanded, and strictly enjoined that, laying all matters aside and notwithstanding any excuse, you personally be and appear on behalf of the people of said state of — before the said supreme court holding jurisdiction in equity, on the first Monday in — next, at the city of Washington, in the District of Columbia, being the present seat of the national government of the United States, to answer concerning things which shall then and there be objected to said state, and to do further, and receive on behalf of said state, what the said supreme court holding jurisdiction in equity shall have considered in this behalf; and this you may in no wise omit, under the penalty of — dollars.

Witness the Honorable Melville W. Fuller, chief justice of the said supreme court, at Washington City, this — day of —, 1894.

S. G.,

[Seal.]

Clerk of the Supreme Court.

No. 704.**Return of Service of Subpœna on a State (1).***[Caption.]*

The within subpœna was served upon J. K., governor of the state of —, at —, on the — day of —, 1894, by delivering to and leaving with him a copy thereof, and at the same time showing him the original with the seal of the court attached; also, on L. M., attorney-general of said state, at —, on the — day of —, 1894, by delivering to him a copy thereof, and at the same time showing him this original with the seal of the court attached.

H. C.,

Dated —.

United States Marshal.

(1) In case of service by copy see No. 32.

No. 705.

Petition for Writ of Prohibition (1).

In the Supreme Court of the United States.

Ex parte Thomas Henry Cooper, Owner } No. ____.
and Claimant of the British Schooner } Original.
"W. P. Sayward."

To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States.

Comes now Thomas Henry Cooper, a British subject, and
gives this honorable court to understand and be informed:

That whereas, by the law of nations, the municipal laws
of a country have no extra territorial force, and can not
operate on foreign vessels on the high seas, and it is legally
impossible, under the public law, for a foreign vessel to com-
mit a breach of municipal law beyond the limits of the ter-
ritorial jurisdiction of the law-making state;

And whereas, the seizure of a foreign vessel beyond the
limits of the municipal territorial jurisdiction for breach of
municipal regulations is not warranted by the law of nations,
and such seizure can not give jurisdiction to the courts of
the offended country, least of all where the alleged act was
committed by the foreign vessel at the place of seizure be-
yond the municipal territorial jurisdiction;

And whereas, by the law of nations, a British vessel sail-
ing on the high seas is not subject to any municipal law ex-
cept that of Great Britain; and by the said law of nations a
British ship so sailing on the high seas ought not to be
arrested, seized, attached, or detained under color of any law
of the United States;

And whereas, by the laws of the United States, as well as
by the law of nations, the district courts of the United States
have not, and ought not to entertain, jurisdiction, or hold
plea of an alleged breach upon the high seas of the muni-
cipal laws of the United States by the captain and crew of a
British vessel, and can acquire no jurisdiction by a seizure

of such vessel on the high seas, though she be afterwards brought by force within the territorial limits of the jurisdiction of said courts;

And whereas, on the ninth day of July, 1887, there was between the governments and people of Great Britain and the United States profound peace and friendship, which relation of peace and friendship had happily subsisted for nearly three quarters of a century before the said ninth day of July, 1887, and still endure, to the great comfort and happiness of two kindred peoples;

And whereas, on the said ninth day of July, 1887, the schooner "W. P. Sayward," a British vessel, duly registered and documented as such, and having her home port at Victoria, in the province of British Columbia, Dominion of Canada, and commanded by one George R. Ferry, a British subject, as captain and master thereof, was lawfully and peacefully sailing on the high seas, to wit, in latitude $54^{\circ} 43'$ north, longitude $167^{\circ} 51'$ west, fifty-nine miles from any land whatsoever, and then being fifty-nine miles northwest from Cape Cheerful, Oonalaska Island, upon waters between Oonalaska and Prybyloff Islands, in the Behring Sea, as more fully appears by the chart in the record of the proceedings of the district court of the United States in and for the territory of Alaska hereinafter referred to;

And whereas, said schooner was at said time and place unlawfully and forcibly seized and arrested by an armed vessel of the United States revenue marine, to wit, the United States revenue cutter, "Rush," cruising under instructions of the secretary of the treasury of the United States for the sole purpose of enforcing the municipal law of the United States, and the said British schooner was thereupon unlawfully, wrongfully, and forcibly detained and seized, and was by force taken by the said "Rush" to the port of Sitka, in the territory of Alaska, United States of America, and within the territory of Alaska and the waters thereof, and within the dominion of the United States, in Behring Sea.

[*The petition then recites the proceedings taken in the district court for the district of Alaska by the United States attorney against the schooner for an alleged violation of sec 1956 of the Revised Statutes, the allegations of the libel, and proceeds as follows:*]

Without this, however, and the said M. D. Ball, the United States attorney, not in any way alleging, or articulating, that the said seizure was made, or the said killing of seal was done, within any river or bay of the United States, or within a marine league of the coast of any portion of the mainland or any island belonging to the United States, or that the said vessel and her master and crew were subject to the laws of the United States sailing upon the high seas, or that any portion of the high seas beyond a marine league from the coasts of the mainland or adjacent islands was within the jurisdiction of the United States.

[*The petition then recites the trial, the decision of the district court against the schooner, the motion made by the petitioner in arrest of judgment, the decree of forfeiture, the appeal taken by the petitioner to the supreme court, and concludes as follows :*]

And whereas all matters of facts hereinbefore recited and alleged, save and except those of which this honorable court takes judicial notice, appear by the record and proceedings of the district court of the United States in and for the territory of Alaska.

And whereas the said appeal has been dismissed by this honorable court on the application of the claimant, appellant, himself not only because he is advised that there is no appeal given to this court from the district of Alaska by the laws of the United States, but because he is advised that the district court, being wholly without jurisdiction, its decree was and is a nullity, and this honorable court is fully authorized by Section 688 of the Revised Statutes of the United States to prohibit any proceedings in the district court for the enforcement of the same.

And whereas the said Thomas Henry Cooper is advised that in consequence of the dismissal of his appeal, according

to the practice of this honorable court, its mandate will issue in due course without further consideration by this court, which said mandate would, in ordinary course, not only permit, but command the district court of Alaska to proceed to execute its pretended decree of forfeiture, and it is therefore the duty of the said Thomas Henry Cooper, now here, to give this honorable court to understand and be informed of all and singular the matters in this suggestion recited and alleged, to the end that this court shall consider this application for prohibition before issuing its mandate, so that it may either frame a special mandate, or take order that the ordinary mandate shall not reach the district court before the writ of prohibition hereinafter prayed, or a rule to show cause why said writ should not issue, shall be served upon said court.

Wherefore the said Thomas Henry Cooper, the aid of this honorable court most respectfully requesting, prays remedy by writ of prohibition to be issued out of this honorable court to the judge of the district court of the United States in and for the territory of Alaska to be directed, to prohibit him from holding the plea aforesaid, the premises aforesaid, anywise concerning further before him, and to prohibit him from in any manner enforcing the said decree or sentence, or from treating the said decree as a valid sentence for any purpose, or from taking any steps whatsoever in the cause aforesaid as to said decree, or any matter or thing remaining to be done in consequence of said decree, and prohibiting him, the said judge, from making or entering any order, judgment, or decree in and about the certain stipulation exacted and required in the course of said proceedings, and generally from the further exercise of jurisdiction in said cause, or the enforcing any order, judgment, or decree made under color thereof.

Joseph H. Choate,
of Counsel.

No. 706.**Verification of above Petition.**

I have read the foregoing petition by me subscribed, and the facts therein stated are true to the best of my information and belief.

Joseph H. Choate.

Subscribed and sworn to before me this 12th day of January, 1891.

Oscar Luckett,

[Seal.]

Notary Public.

(1) Taken from record *in re* Cooper, 138 U. S., 404. With reference to the jurisdiction of the Supreme Court to issue writs of prohibition, see R. S. Sec. 688; see also Foster's Fed. Prac., Secs. 361, 362.

No. 707.**Suggestion for Writ of Prohibition (1).**

In the Supreme Court of the United States.

<i>Ex parte</i> Sir John Thompson, K. C. M. G.,	} No. —.
Her Britannic Majesty's Attorney-Gen-	
eral of Canada.	

Original.

To the Honorable, the Chief Justice and Associated Justices of the Supreme Court of the United States:

Comes now Sir John Thompson, K. C. M. G., Her Britannic Majesty's attorney-general of Canada, and gives this honorable court to understand and be informed:

That whereas, by the law of nations the municipal laws of a country have no extraterritorial force, and can not operate on foreign vessels on the high seas, and it is legally impossible, under the public law, for a foreign vessel to commit a breach on municipal law beyond the limits of the territorial jurisdiction of the law-making state;

And whereas, the seizure of a foreign vessel beyond the limits of the municipal territorial jurisdiction for breach of municipal regulations is not warranted by the law of nations, and such seizure can not give jurisdiction to the courts of the offended country, least of all where the alleged act was

committed by the foreign vessel at the place of seizure beyond the municipal territorial jurisdiction ;

And whereas, by the laws of nations a British vessel sailing on the high seas is not subject to any municipal law except that of Great Britain ; and by the said law of nations a British ship so sailing on the high seas ought not to be arrested, seized, attached, or detained under color of any law of the United States ;

And whereas, by the laws of the United States, as well as by the law of nations, the district courts of the United States have not, and ought not, to entertain jurisdiction or hold plea of an alleged breach upon the high seas of the municipal laws of the United States by the captain and crew of a British vessel, and can acquire no jurisdiction by a seizure of such vessel on the high seas, though she be afterwards brought by force within the territorial limits of the jurisdiction of said courts ;

And whereas, on the ninth day of July, 1887, there was between the governments and peoples of Great Britain and the United States profound peace and friendship, which relations of peace and friendship had happily subsisted for nearly three-quarters of a century before the said ninth day of July, 1887, and still endure to the great comfort and happiness of two kindred peoples ;

And whereas, on the said ninth day of July, 1887, the schooner " W. P. Sayward," a British vessel, duly registered and documented as such, and having her home port at Victoria, in the province of British Columbia, Dominion of Canada, and commanded by one George R. Ferry, a British subject, as captain and master thereof, was lawfully and peaceably sailing on the high seas, to wit, in latitude $54^{\circ} 43'$ north, longitude $167^{\circ} 51'$ west, fifty-nine miles from any land whatsoever, and then being fifty-nine miles northwest from Cape Cheerful, Oonalaska Island, upon waters between Oonalaska and Prybyloff Islands, in Behring's Sea, as more fully appears by the chart in the record of the proceedings of

the district court of the United States in and for the territory of Alaska hereinafter referred to ;

And whereas, said schooner was at said time and place unlawfully and forcibly seized and arrested by an armed vessel of the United States revenue marine, to wit, the U. S. revenue cutter "Rush," cruising under instructions of the secretary of the treasury of the United States, for the sole purpose of enforcing the municipal law of the United States, and the said British schooner was thereupon unlawfully, wrongfully, and forcibly detained and seized, and was by force taken by the said "Rush" to the port of Sitka, in the territory of Alaska, United States of America, and within the territory of Alaska and waters thereof, and within the dominion of the United States in Behring's Sea ;

And whereas, the British schooner, being as aforesaid so unlawfully, wrongfully, and forcibly seized on the high seas and without the limits of Alaska Territory or the waters thereof, and being so unlawfully, wrongfully, and forcibly brought within the limits of Alaska Territory, and the waters thereof, nevertheless a certain M. D. Ball, an attorney of the United States for the district of Alaska, not ignorant of the premises, but unmindful of the danger of disturbing the peace and harmony subsisting between the United States and Great Britain, did by process out of the district court of the United States in and for the district of Alaska, attach and arrest the said schooner "W. P. Sayward," so, as aforesaid, wrongfully seized while lawfully sailing on the high seas under the protection of the law of nations, and so, as aforesaid, wrongfully and forcibly brought within the said port of Sitka, in the territory of Alaska, and before the judge of the said district court, contrary to the said law of nations, and the laws of the United States, did unjustly draw in plea to answer a certain libel by him, the said M. D. Ball, against the said schooner, her tackle, apparel, boats, cargo, and furniture exhibited and promoted, craftily and subtly therein alleging and articulating that the said schooner "W. P. Sayward," her

tackle, apparel, boats, cargo, and furniture, were seized on the ninth day of July, 1887, within the limits of Alaska Territory, and in the waters thereof, and within the civil and judicial district of Alaska, to wit, within the waters of that portion of Behring's Sea belonging to the United States and said district, and that all said property was then and there seized as forfeited to the United States for the following causes: That the said vessel, and her captain, officers, and crew were then and there found engaged in killing fur seal within the limits of Alaska Territory, and in the said waters thereof, in violation of section nineteen hundred and fifty-six of the Revised Statutes of the United States, and that on said ninth day of July, 1887, George R. Ferry and certain other persons whose names were to said attorney unknown, who were then and there engaged on board the said schooner "W. P. Sayward," as seamen and seal hunters, did, under the direction and by the authority of George R. Ferry, then and there master of said schooner, engage in killing, and did kill in the territory and district of Alaska, and in the waters thereof, thirty fur seals, in violation of Section 1956 of the Revised Statutes of the United States in such cases made and provided. Without this, however, and the said M. D. Ball not in any way alleging, or articulating, that the said seizure was made, or the said killing of seal was done within any river or bay of the United States, or within a marine league of the coast of any portion of the mainland or any island belonging to the United States, and that the said vessel and her master and crew were subject to the laws of the United States sailing upon the high seas, or that any portion of the high seas beyond a marine league from the coasts of the mainland or adjacent islands was within the jurisdiction of the United States;

And whereas, a demurrer by claimant, filed on the fifteenth day of September, 1887, alleging the insufficiency of the libel, was overruled by the Court on the said fifteenth day of September, 1887, and thereafter the claimant filed his answer,

specifically denying the allegations of the libel that the seizure aforesaid was made within the waters of Alaska Territory, or within the civil or judicial district of Alaska or in any portion of Behring's Sea belonging to the United States, and specifically denying the allegations of the libel that the said vessel, her captain, officers, and crew were then and there found engaged in killing fur seal within the limits of Alaska Territory, or in the waters thereof, or that any of them did kill any fur seal therein;

And whereas, at the trial of said cause, the libellant, through its witnesses, by it called in that behalf, to wit, the captain and officers of the "Rush," did make plain and clear to the court what was not clearly disclosed in the libel, that is to say, the place of the alleged offense, and the place of said seizure, and did support the averments of the claimant's answer, and by its evidence so offered in its behalf and not gainsaid in any way, did show that the place of the alleged killing of seal was without the limits of Alaska Territory or the waters thereof, and that the said seizure was not made, nor said killing of seal done, within the waters of Alaska Territory, or within the civil or judicial district of Alaska, or in any portion of Behring's Sea belonging to the United States, but that the place of the alleged offense, and the place of said seizure, was upon the high seas, to wit, in latitude $54^{\circ} 43'$ north, and longitude $167^{\circ} 51'$ west, fifty-nine miles from any land whatsoever, and fifty-nine miles northwest from Cape Cheerful, Oonalaska Island, upon waters between Oonalaska and Prybyloff Islands, in Behring's Sea, which said testimony for libellant, as to place of seizure, and place of alleged offense, was supported by that of the claimant. So that the judge of the district court of the United States for the district of Alaska was fully informed that the seizure had been made, and the said alleged killing of seal done on the high seas without the limits of Alaska Territory or the waters thereof, and that said vessel was brought by force within the jurisdiction of said court, and that, therefore,

under the laws of nations, and under the laws of the United States, he had, and could have, no jurisdiction of the alleged offense, or of the vessel so as aforesaid unlawfully, wrongfully, and tortiously seized without the jurisdiction of the United States and of the court, and so wrongfully and by force brought within the jurisdiction of the United States and of the court, yet, nevertheless, being so fully advised, said judge of the district court of Alaska aforesaid did, on the nineteenth day of September, 1887, in contempt of the authority of the United States, in violation of the laws of the United States, and of the laws of nations, and to the great danger of the friendly relations happily subsisting between Great Britain and the United States, assert and attempt to exercise jurisdiction over the said vessel, the same being the vessel of a friendly nation at peace with the United States, knowing the same to have been unlawfully seized on the high seas without the jurisdiction of the United States, to be alleged and proved to be the same place as the place of seizure, that is to say the high seas, without the limits of the territory of Alaska or the waters thereof, and without the jurisdiction of the United States; all this the said judge well knowing, he did find as fact the killing of fur seal on the ninth day of July, 1887, by the captain and crew of the aforesaid British vessel, the "W. P. Sayward," at the said place of seizure as aforesaid, and did find as conclusion of law that such killing at such place on the high seas, to wit, at the said place of seizure in latitude $54^{\circ} 43'$ north, and longitude $167^{\circ} 51'$ west, and fifty-nine miles from any land whatsoever, and fifty-nine miles northwest from Cape Cheerful, Oonalaska Island, was in violation of Section 1956 of the Revised Statutes of the United States, and by reason thereof the libellant was entitled to a decree of forfeiture of said British vessel, her tackle, apparel, boats, cargo, and furniture;

And whereas, after said assertion of jurisdiction to condemn and forfeit said vessel, and before decree or sentence, the claimant did move the court to arrest the decree of for-

feiture, and among other grounds did distinctly set up that the court had no jurisdiction over the subject-matter of the cause, as shown by libellant's own testimony as to place of offense and seizure.

Yet the said court did, nevertheless, in contempt of the authority of the United States, and in violation of the laws of the United States, and in violation of the laws of nations, and to the manifest danger of the peaceful relations of the two countries, assert and attempt to exercise jurisdiction in the premises; and on the nineteenth day of September, 1887, did make and enter a pretended decree of forfeiture to the United States of said vessel, her tackle, apparel, boats, cargo, and furniture, and direct that unless an appeal be taken, the usual writ of *venditioni exponas* be issued to the marshal, commanding him to sell all said property and bring the proceeds into court to be distributed according to law, costs to be taxed and awarded against the claimants.

And whereas, one Thomas Henry Cooper, a British subject, being admitted as the actual owner of the said schooner "W. P. Sayward," by order of the district court to interpose as claimant, did, in order to prevent the execution of said decree, take an appeal to this honorable court on the twenty-sixth day of April, 1888, and docketed the same on the thirtieth day of October, 1888, under No. —.

And whereas, all matters of fact hereinbefore recited and alleged, save and except those of which this honorable court takes judicial notice, appear by the record and proceedings of the district court of the United States in and for the territory of Alaska;

And whereas, the said appeal has been dismissed by this honorable court on the application of the claimant, appellant himself, not only because he was advised that there is no appeal given to this court from the district of Alaska by the laws of the United States, but because he is advised that the district court being wholly without jurisdiction, its decree was, and is, a nullity, and this honorable court is fully author-

ized by Section 688 of the Revised Statutes of the United States to prohibit any proceedings in the district court for the enforcement of the same;

And whereas, the said Sir John Thompson, her Britannic majesty's attorney-general of Canada, is advised that in consequence of the dismissal of the appeal, according to the practice of this honorable court, its mandate will issue in due course, without further consideration by this court, which said mandate would, in ordinary course, not only permit, but command, the district court of Alaska to proceed to execute the pretended decree of forfeiture, and it is therefore eminently proper that this honorable court should understand and be informed of all and singular the matters in this suggestion recited and alleged, to the end that this court shall consider this suggestion for prohibition before issuing its mandate, so that it may either frame a special mandate or take order that the ordinary mandate shall not reach the district court before the writ of prohibition herein suggested, or a rule to show cause why said writ should not issue, shall be served upon this court.

Wherefore the said Sir John Thompson, K. C. M. G., her Britannic majesty's attorney-general of Canada, the aid of this honorable court most respectfully requesting, for said Thomas Henry Cooper, submits to this honorable court that a writ of prohibition ought to be issued out of this honorable court to the judge of the district court of the United States in and for the territory of Alaska to be directed, to prohibit him from holding the plea aforesaid, the premises aforesaid, anywise concerning further before him, and to prohibit him from in any manner enforcing the said decree or sentence, or from treating the said decree as a valid sentence, for any purpose, or from taking any steps whatsoever in the cause aforesaid as to said decree, or any matter or thing remaining to be done in consequence of said decree, and prohibiting him, the said judge, from making or entering any order, judgment, or decree in or about the certain stipulation ex-

acted and required in the course of said proceedings, and generally from the further exercise of jurisdiction in said cause, or the enforcing any order, judgment, or decree made under color thereof.

And the said Sir John Thompson, K. C. M. G., her Britannic majesty's attorney-general of Canada, most respectfully informs this honorable court that the fact that this, his suggestion, is presented with the knowledge and approval of the imperial government of Great Britain, will be brought to the attention of the court by counsel duly thereunto authorized by her Britannic majesty's representative in the United States.

Calderon Carlisle,
Counsel for Sir John Thompson, K. C.
M. G., Her Britannic Majesty's At-
torney-General of Canada.

[*Verification.* See No. 706.]

(1) Taken from record *in re* Cooper, 138 U. S., 404. See R. S., Sec. 688, and Foster's Fed. Prac., Secs. 361, 362, and No. 705.

No. 708.

Rule to Show Cause why Writ of Prohibition should not Issue (1).

In the Supreme Court of the United States.

Ex parte: In the matter of J. S., late Collector } No. —,
of the Customs of the Port of —, Peti- } Original.
tioner. }

On consideration of the petition of J. S., late collector of customs of the port of New York,

It is here now ordered by the court that cause be shown by the judge of the district court of the United States for the southern district of — before this court, at Washington, on the — day of — next, at 12 o'clock noon of that day, or as soon thereafter as counsel can be heard, why a writ

of prohibition should not be granted as prayed in this petition.

Dated —.

(1) From record *ex parte* Fassett, Collector, 142 U. S., 479.

No. 709.

Answer in the Supreme Court.

Consult form of Answer, No. 176 *et seq.*

No. 710.

Verification of a Pleading in the Supreme Court.

Consult forms Nos. 85, 133, 188, 585, and 706.

No. 711.

Motion to Dismiss for Want of Jurisdiction.

In the Supreme Court of the United States.

The State of —, Plaintiff,

vs.

The State of —, Defendant.

Now comes the defendant and moves the court to dismiss the bill herein for want of jurisdiction, as apparent from the bill:

First. Because it therein appears that the claim relates to an antiquated controversy between colonies, previous to the formation of the government.

Second. Because there is no legislative provision or law in force to direct or regulate the process, forms of proceeding, judgment, or execution, or to authorize any action by the court in the premises.

Third. Because the nature of the suit is political in its character, brought by a sovereign for the restitution of sovereignty of disputed territory.

R. X.,

Solicitor for Defendant.

No. 712.**Demurrer for Want of Jurisdiction.**

In the Supreme Court of the United States.

The State of —, Plaintiff,

vs.

The State of —, Defendant.

Now comes the defendant in this cause and demurs to the bill filed herein, and asks that the same be dismissed, for the following reasons:

First. It does not appear from the bill that the parties before the court are such as to give the court jurisdiction of the same.

Second. It does not appear from the bill that the matter in question or controversy is of such a judicial nature as to authorize the court to take cognizance of it.

Third. It appears from the bill that the controversy relates solely to the jurisdiction and sovereignty of the state in its political capacity, and presents no question of private rights of persons or property for judicial determination.

R. X.,

Solicitor for Defendant.

No. 713.**Plea.**

In the Supreme Court of the United States.

A. B., Plaintiff,

vs.

C. D., Defendant.

The said C. D., defendant, by R. X., his solicitor, comes and says that this court ought not to take further cognizance of this suit, because the plaintiff herein is not a counsel of —, at the city of —, as stated in his bill of complaint herein, nor was he at the time of the filing of his said bill, and this he is ready to verify.

[*If the plea is of another bill pending, say: "That heretofore, and before the said plaintiff exhibited his bill in this honorable court, to wit, on the — day of —, 1894, the said plaintiff in the circuit court of the United States at —, in the — circuit, for the same matters and to the same effect, and for like cause of complaint and relief as in this his bill herein, and to which bill this defendant did then and there put in an answer, and said bill is still pending in said court and undetermined."*]

Wherefore he prays judgment if the court here will take cognizance of or entertain this action. R. X.,

Solicitor for Defendant.

I, R. X., solicitor for the defendant in this suit, hereby certify that in my opinion the foregoing plea to the bill of complaint filed herein is well founded in point of law.

R. X.,

Solicitor for Defendant.

[*Verification.*]

No. 714.

Orders and Decrees.

For forms of Orders and Decrees in the Supreme Court, see under title "Appellate Proceedings."

MISCELLANEOUS.

No. 715.

**Bill in Equity to Subject Property of Absent Defendant
to Pay a Judgment (1).**

The Circuit Court of the United States,
for the — District of —.

A. B. }
 vs. }
C. D. } In Equity. No. —.
E. F. }
G. H. }

To the Honorable Judges of the Circuit Court of the United
States within and for the — District of —:

A. B., of —, plaintiff herein, respectfully shows unto
your honors that at the — term, 1894, of this court, he
recovered a judgment at law in cause No. —, for —
dollars, and costs amounting to — dollars, amounting in
the aggregate to — dollars, against C. D., which said judg-
ment is still in full force and unreversed.

And your orator further says that execution was duly
issued upon said judgment to the marshal of said district on
the — day of —, 1894, and levy was duly made upon
the personal property of said C. D., and only the sum
of — dollars made upon said writ of execution, and the
same was returned unsatisfied on the — day of —, 1894,
leaving unpaid and still due upon said judgment the sum
of — dollars, with interest.

And your orator further says that he is informed and believes that the said C. D. has fled the country, and that certain property of his, to wit, money of or about the value of — dollars, sufficient to satisfy the judgment, is still in the possession and under the control of one E. F., but which your orator is unable to reach by process of law; and your orator is also informed that one G. H., an alien, residing in —, without this district and the jurisdiction of this court, claims some interest or right to the money aforesaid now in the possession of said E. F., and the property of said C. D.

Wherefore your orator prays that C. D., E. F., and G. H. be made parties defendant herein, and that process issue requiring them to appear and answer this bill of complaint; that said G. H. be required especially to answer (but not under oath) by what right or title he claims the money aforesaid, and to set forth his claims in this suit; and that E. F. be required especially to answer how much money belonging to said C. D. he has now in his possession, and what is the indebtedness due to him from the said C. D., and that after payment of all lawful and equitable prior claims the said money may be applied to the judgment recovered by your orator against said C. D. until further order of this court, and for such other and further relief as may be proper, just, and equitable.

A. B.,

X. & X.,

Plaintiff.

Solicitors for Plaintiff.

(*Verification, as in No. 85.*)

(1) As to proceedings in case of absent defendant in a federal court, see Desty's Fed. Proc., Sec. 25, and cases there cited, and R. S., Sec. 738.

No. 716.

Motion for Service by Publication (1).

[*Caption.*]

Now comes A. B., and moves this honorable court for an order to proceed under Section 738 of the Revised Statutes

of the United States to obtain service upon C. D. and G. H. by publication, on the ground that the marshal returned the *subpœna* issued in this cause, indorsed "The defendants, C. D. and G. H., are not found in my district," and that personal service is not practicable, the absent defendants being inhabitants of the dominion of Canada [*or as may be*].

X. & X.,

Attorneys for Plaintiff.

(1) As to when service by publication is allowed in federal courts, see Desty's Fed. Proc., Sec. 25, and R. S., Sec. 738.

No. 717.

Order for Service by Publication (1).

[*Caption.*]

Upon the motion of X. & X., counsel for A. B., and it appearing to the court that the defendants, C. D. and G. H., are not inhabitants of, nor are found within, this district, nor have voluntarily entered their appearance herein, and that personal service upon the said defendants, C. D. and G. H., is not practicable, it is hereby ordered that said defendants, C. D. and G. H., appear, plead, answer, or demur to the said bill filed by the plaintiff herein, by the — day of —, 1894, and in default thereof that the court will proceed to the hearing and adjudication of said suit; and that this order be published in a newspaper of general circulation, to wit, [*name the paper*], once a week for six consecutive weeks.

(1) See Note to No. 715.

No. 718.

Notice for Publication.

The Circuit Court of the United States for the — District of —. A. B. *vs.* C. D., E. F., and G. H. Whereas, proceedings have been instituted by the plaintiff to subject certain

moneys and credits belonging to C. D., in the possession and under the control of E. F., to the payment of a judgment against said C. D., as set forth in the bill filed in the above cause; and in pursuance of an order of said court granted in the above-entitled cause, notice is hereby given to C. D. and G. H., defendants, who are not inhabitants of nor are found within this district, that they appear, plead, answer, or demur to the bill of complaint filed by the plaintiff herein, by the — day of —, 1894, and that in default thereof, the court will proceed to the hearing and adjudication of said suit.

X. & X.,

Solicitors for Plaintiff.

A. B.,

Plaintiff.

No. 719.

Decree Subjecting Absent Defendant's Property to Payment of Judgment.

[*Caption.*]

This cause came on to be heard on the — day of —, 1894, on the bill of complaint and testimony, [*or as may be*] the said defendants being represented by counsel. Upon the hearing of the case the court thereupon finds that all of the defendants have been duly notified of the pendency and prayer of the bill, and have failed to answer the same; and the court further finds from the testimony that the defendant, E. F., has in his possession and belonging to C. D. a large sum of money; that the said plaintiff is entitled to have sufficient of the said money applied to the payment of the judgment and costs fully described in his bill in this cause, subject to any claim which may have been set in any suit in other courts prior to the filing of the bill in this cause; and that there is now due to the said plaintiff, on the said judgment and costs, the sum of — dollars, which, with interest — dollars, and clerk's additional costs in said cause, to wit, — dollars, makes a total of — dollars due the said plaintiff.

It is therefore ordered, adjudged, and decreed that the said defendant, E. F., pay into the registry of this court the said sum of — dollars, and in addition thereto the costs in this cause, taxed at — dollars, the sum so paid to be credited on any sum which may be found due from him to the said C. D., or to the defendant, G. H., and that the said C. D. and G. H. be forever enjoined from collecting the amount so paid by said E. F. from said E. F., or from refusing to credit the said sum upon any amount which may be found due from the said E. F. to the said C. D., as afore-said, provided, however, that this decree shall not interfere with the payment to any other creditor of the said C. D., who has brought suit to subject the same, prior to the filing of the bill in this cause.

No. 720.

Order of Distribution.

[*Caption.*]

On motion of R. X., counsel for the plaintiff, and it appearing to the court that in accordance with a decree heretofore entered, the defendant, E. F., has paid into the registry of this court the sum of — dollars in obedience thereto, and the court proceeding to distribute the same, orders and directs that after payment of the following sums, to wit [*set forth the items*], that the sum of — dollars shall be paid to the plaintiff, A. B.

And it is further ordered that the sum of — dollars be duly credited on the judgment and costs in the case of A. B. vs. C. D., No. —, in the circuit court of the United States for the — district of —, in full satisfaction of the same.

No. 721.

Judgment in Customs Law Case (1).

The Circuit Court of the United States
for the — District of —.

<i>In re</i> Application of A. B., Surveyor of Customs, <i>in re</i> C. D., Importer.	}	No. —. Judgment.
--	---	------------------

This cause, coming on this — day of —, 1894, to be heard upon the application of A. B., surveyor of customs, and the return of the evidence and facts by the board of United States general appraisers, and also upon the evidence produced on the part of the United States and on the part of the said C. D., importer, and the court hearing the arguments of counsel for the respective parties, and being fully advised in the premises, finds that the classification of the article in controversy herein as made by the said board of United States general appraisers is correct, and should be sustained, and that the said article is correctly classified as [*state what*], under paragraph —, schedule —, of the act of congress passed October 1, 1890, entitled "An act to reduce the revenue and equalize duties on imports, and for other purposes," and that the rate of duty imposed on said article is — cents per —.

It is therefore ordered, adjudged, and decreed that the application of A. B., surveyor of customs, be and hereby is dismissed, and that the said C. D. have and recover of the United States the sum of — dollars, the amount of duty paid by him as importer in excess upon said importation of said article involved herein, and also costs in his behalf expended herein, and that a copy of this judgment be certified to the attorney-general of the United States, according to law, to which finding the United States, by its attorney, J. H., excepts, and prays that the exception be noted of record, which is accordingly done.

G. W.,

Circuit Judge.

(1) For form of Petition, consult No. 8.

No. 722.**Petition for Appeal—Customs Law Case (1):**

The Circuit Court of the United States, for the
— Circuit and District of —.

No. —.

In the matter of the application of the A. B. Company for the review of the question of law and fact involved in the decision of the board of general appraisers, dated —, concerning merchandise imported by said A. B. Co.

The applicant, the A. B. Company, applies and petitions the court for an appeal from the decision of the court in this proceeding, on its application herein, sustaining the demurrer to the statement of facts contained in this record, and dismissing its application herein, and affirming and approving the decision of the board of general appraisers at New York and of the surveyor of the port of —.

And in support of this petition for appeal, states that many thousands of dollars, to wit, — dollars of duties in excess of the actual amount of lawful duties demanded, exacted, and collected, or about to be collected, from applicant herein, and many thousands of dollars, to wit, hundreds of thousands of dollars of such excessive duties, claimed, collected, or about to be collected from other parties, depend upon the decision on this application; that the question involved is of such importance as to require a review of the decision of the court herein by the supreme court of the United States and the United States circuit court of appeals for the — circuit.

And said applicant, the A. B. Company, as such applicant, sets out its assignment of errors as follows:

1. The court erred in sustaining the demurrer of the United States.

2. The court erred in approving and affirming the decision in controversy herein of the surveyor of customs of the port of —, and of the board of general appraisers.

3. The court erred in dismissing the said application herein for review of said decision of said surveyor and board of general appraisers.

4. The court erred in deciding that the customs duty imposed by the laws of the United States upon —— [*describe rate of duty imposed by collector*].

And thereupon the A. B. Company prays the court to allow an appeal from the decisions aforesaid herein to the United States court of appeals for the —— circuit, and tenders herewith its bond, with E. F. as its security, that the appellant shall prosecute its appeal to effect, and answer all damages and costs if it fail to make its plea good, and prays that the same be approved.

R. X.,

Of Counsel.

The A. B. Company,

By A. B., President.

(1) Proceedings under Sec. 15 of the Act of June 10, 1890, 26 Stat. at L., 131.

CLERK'S BLANKS.*

No. 723.

Entry (General Form).

The Circuit Court of the United States
for the — District of —.

— }
vs. } No. —. —.

This cause came on to be — heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz.:

No. 724.

Certified Copy of Entry.

The United States of America,
— District of —, ss.

At a stated term of the — court of the United States of America, within and for the — district of —, in the — judicial circuit of the United States of America, begun and had in the court-rooms, at the city of —, in said district, on the first Tuesday of —, being the — day of that month, in the year of our Lord one thousand eight hundred and ninety —, and of the independence of the United States of America, one hundred and—.

Present, the Honorable —.

On —, the — day of —, 189—, among the proceedings had were the following, to wit:

*Consult the preceding forms for Writs, Notices, Subpœnas, Citations, etc.

The United States of America,

— District of—, ss.

I, — clerk of the — court of the United States, within and for the district aforesaid, do hereby certify that the foregoing — is truly taken and correctly copied from the journal of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at the city of —, this — day of —, 189—.

—, Clerk.

By —, Deputy.

No. 725.

Certificate of Copy of Entry Allowed in Chambers.

The United States of America,

— District of —, ss.

— }
vs. } No. —. —.
— }

Be it remembered, that on a hearing before the honorable —, sitting at chambers on the — day of —, 189—, the following order was made and signed, and ordered to be entered upon the records of the court in the above entitled cause. to wit:

The United States of America,

— District of —, ss.

I, —, clerk of the circuit court of the United States, within and for the district aforesaid, do hereby certify that the above is a true copy of —, entered upon the chancery order book of said court in the case therein entitled; that I have compared the same with the original entry of said —, and it is a true transcript therefrom and of the whole thing.

Witness my official signature and the seal of said court at —, in said district, this — day of —, 189—, and in the — year of the independence of the United States of America.

—, Clerk.

By —, Deputy.

No. 726.

Certificate for Copy.

The United States of America,

— District of —, ss.

I, —, clerk of the — court of the United States, within and for the district aforesaid, do hereby certify that —.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, at —, this — day of —, 18—.

Clerk — Court of the United States.

By —. Deputy.

No. 727.

Certificate as to Official Character of Clerk by a Judge.

The United States of America,

— District of —, ss.

I, —, judge of the — court of the United States, within and for the district aforesaid, the same being a court of record, within and for the district aforesaid, do hereby certify that — is clerk of said court, and was such clerk at the time of making and subscribing to the foregoing certificate —, and that the attestation of said clerk is in due form of law and by the proper officer.

In testimony whereof, I do hereby subscribe my name at —, —, this — day of —, 189—.

Judge of the — Court of the
United States for the —
District of —.

No. 728.**Certificate as to Official Character of Judge by the
Clerk of the Court.**

The United States of America,

— District of —, ss.

I, —, clerk of the — court of the United States, within and for the district aforesaid, do hereby certify that —, whose name is subscribed to the foregoing certificate, was, at the time of subscribing the same, judge of the — court, within and for the district aforesaid, duly commissioned and qualified, and that full faith and credit are due to all his official acts as such.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at —, this — day of —, 189—.

Clerk — Court of the United States,

By —, Deputy.

No. 729.**Certificate as to Searching Record.**

The United States of America,

— District of —, ss.

I, —, clerk of the circuit court of the United States, within and for the district aforesaid, do hereby certify that I have searched the records of said court and find no judgments or suits pending therein, by or against —.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at —, this — day of —, 189—.

—, Clerk.

By —, Deputy.

No. 730.**Order of Court to Pay Account.**

At a stated term of the circuit court of the United States within and for the — judicial circuit and the — district of —, begun and held at the city of —, on the first Tuesday of —, being the — day of that month, in the year of our Lord one thousand eight hundred and —, and of the independence of the United States of America the —.

Present, the Honorable —, district judge.

Among the proceedings had were the following, to wit:

—, 18—.

Whereas — has presented to this court an account for his services for the — quarter, 18—, and in presence of —, Esq., United States attorney, has proved on oath to the satisfaction of the court that the services therein charged have been actually and necessarily performed as therein stated; and whereas said charges appear to be just and according to law, it is ordered that said account, amounting to — dollars and — cents (\$—) be and the same hereby is approved.

— District of —, ss.

I, —, clerk of said court, do hereby certify that the foregoing is a true copy of an order entered upon the journal of said court.

Witness my official signature and the seal of said court, at —, this — day of —, 189—.

—, Clerk.

By —, Deputy Clerk.

No. 731.

Schedule No. 1.

The District [*or*, Circuit] Court
for the — District of —.

For attendance on court while in ses-
sion on the following days, to wit:

days,

days,

days,

Travel from Cincinnati (residence of
clerk) to Columbus, the place of
holding court for the eastern divi-
sion, and return, — trips, each trip
240 miles, at 5c. per mile

For miscellaneous fees, for services
rendered, as follows:

Making entries on journal—

Opening and adjournment of court,
— days, — folios, each folio, .15

Order for grand jury, — folios,
each folio,15

Empanelment of grand jury, —
folios, each folio,15

Reports of grand jury, — folios,
each folio,15

Approving appointment of bailiffs,
— folios, each folio,15

Appointment U. S. commissioners,
— folios, each folio,15

Excusing jurors, — folios, each
folio,15

Ordering rule to show cause to is-
sue, — folios, each folio, . . .15

Ordering rule to show discharged,
— folios, each folio,15

Ordering attachment to issue, —
folios, each folio,15

Ordering attachment discharged,
— folios, each folio,15

Entering sentence for contempt of
court, — folios, each folio, . .15

Entering approval of — accounts
of district attorney, — folios,
each folio,15

Entering approval of — accounts
of marshal, — folios, each folio, .15

Entering approval of — accounts
of clerk, — folios, each folio, .15

Entering approval of — accounts of U. S. commissioners, — folios, each folio,	15
Order to pay grand jurors, — folios, each folio,	15
Order to pay petit jurors, — folios, each folio,	15
Order to pay grand jury witnesses, — folios, each folio,	15
Application for appointment of chief supervisor of elections, — folios, each folio,	15
Appointing chief supervisor of election, — folios, each folio, . .	15
Resignation of chief supervisor, — folios, each folio,	15
Approving appointment of super- visors of election, — folios, each folio,	15
Making certified copies of journal entries, to wit :	
Allowance to district attorney, — folios, each folio, 10c., ctfc. and seal,	35
Approval of accounts of district at- torney, — folios, each folio, 10c., ctfc. and seal,	35
Approval of accounts of marshal, — folios, each folio, 10c., ctfc. and seal,	35
Approval of accounts of clerk, — folios, each folio, 10c., ctfc. and seal,	35
Approval of accounts of U. S. com- missioners, — folios, each folio, 10c., ctfc. and seal,	35
Order to pay grand jurors, — folios, each folio,	10
Order to pay petit jurors, — folios, each folio,	10
Order to pay grand jury witnesses, — folios, each folio,	10
Other miscellaneous fees :	
Filing — applications for grand jury, each, .	10
Filing — precipes for grand jury witnesses, each, .	10
Issuing — subpoenas for grand jury witnesses, each, .	25
Filing and entering return on — subpoenas for grand jury wit- nesses, each, .	25

	Swearing — jurors to attendance and travel, each, .10								
	Swearing — grand jury witnesses to attendance and travel, . each, .10								
	Swearing — bailiffs, . . . each, .10								
	Filing — transcripts of U. S. commissioners, each, .10								
	Filing — other papers of U. S. commissioners, each, .10								
	Filing — monthly reports of U. S. commissioners, each, .10								
	Issuing — commissions to super- visors of elections, . . . each, 1.00								
	Filing — duplicate accounts of U. S. officers, each, .10								
	Issuing rule to show cause, each, 1.00								
	Filing and entering return there- on, each, .25								
	Issuing order of attachment, each, 1.00								
	Filing and entering return there- on, each, .25								
	Total amount of schedule,								

No. 732.

Schedule No. 2.—Civil Cases.

The District [*or*, Circuit] Court
for the — District of —.

For fees in the following cases, in
which the United States is plaintiff:

Filing petition, . . . . .	.10
Entering rule day for answer, . . . . .	.30
Filing precipe for summons, . . . . .	.10
Issuing summons,	1.00
Filing and entering return on sum- mons, . . . . .	.25
Filing — stipulations, . . each, .	.10
Filing — replications, . . each, .	.10
Filing — demurrers, . . each, .	.10
Filing — motions, each, .	.10
Filing — affidavits, . . . each, .	.10
Filing and opening — deposi- tions,	each, .25
Filing — precipes for witnesses, each, .	.10
Issuing — subpoenas for wit- nesses,	each, .25
Filing and entering return on — subpoenas,	each, .25
Swearing — witnesses to testify, each, .	.10
Swearing — witnesses to attend- ance and travel,	each, .10
Entering order to pay witnesses, . each, .	.15
Copying order to pay witnesses to marshal,	each, .10
Entering — on journal, — folios, each, . . . . .	.15
Entering — on journal, — folios, each, . . . . .	.15
Entering — on journal, — folios, each, . . . . .	.15
Entering judgment, — folios, each, .	.15
Dockets, indexes, etc.,	
Commission on — received and paid out, at 1 percent,	
Final record, — folios, each, . . .	.15

No. 733.

Schedule No. 3.—Criminal Cases.

The District [*or*, Circuit] Court
for the — District of —.

Filing indictment,	10
Filing precipe for capias,	10
Issuing capias,	1.00
Filing and entering return on capias, . . . . .	.25
Entering arrangement and plea, — folios, . . . . .	.15
Taking recognizance, — folios, . . . . .	.25
Filing written recognizance, each,	10
Swearing sureties,	10
Certificate and seal thereto, . . . . .	.35
Issuing temporary mittimus,	1.00
Filing and entering return on temporary mittimus, . . . . .	.25
Filing affidavit under crimes act,	10
Entering order to subpœna defendant's witnesses, — folios, each, . . . . .	.15
Filing — precipes for witnesses, each,	10
Issuing — subpœnas for witnesses, . . . . .	.25
Filing and entering return on — subpœnas, . . . . .	.25
Entering trial and verdict, — folios, . . . . .	.15
Swearing — witnesses to testify, each,	10
Swearing — witnesses to attendance and travel,	10
Entering orders to pay — witnesses, — folios, . . . . .	.15
Copying orders to pay — witnesses for marshal, — folios, each,	10
Filing — motions,	10
Filing verdict,	10
Entering sentence, — folios, each, . . . . .	.15
Issuing final commitment,	1.00
Filing and entering return on final commitment, . . . . .	.25
Entering order of distribution, — folios, . . . . .	.15
Commission on \$—, received and paid out, at 1 percent,	
Dockets, indexes, etc.,	
Entering final record, — folios, each, . . . . .	.15

No. 734.

Quarterly Statement of Clerk.

Account of —, Clerk,

For quarter ending —, 189—.

The United States, Dr.

To —, Clerk of the Circuit and District Courts of the United States within and for the — District of —.

For compensation and fees for services rendered the United States in said courts during the quarter ending —, 18—, as follows, to wit:

DISTRICT COURT (1).

Schedule "A," per diems and miscellaneous fees, \$——.

Schedule "B," cases, \$——.

CIRCUIT COURT (1).

Schedule No. 1, per diems and miscellaneous fees, \$——.

Schedule No. 2, civil cases, \$——.

Schedule No. 3, criminal cases, \$——.

The United States of America,

— District of —, ss.

I, —, clerk of the said courts, do solemnly swear that the services charged in the foregoing account have been actually and necessarily performed as therein stated, and that all the items stated in said schedules are correct and legal, and the amounts justly due me, as I verily believe, so help me God. —.

Subscribed and sworn to before me this — day of —, 189—.

U. S. Commissioner.

(1) In case the Clerk of the District and Circuit Courts is not the same person, only the form for the court of which he is clerk should be used.

No. 735.**Order Approving Clerk's Account.**

At a stated term of the circuit court of the United States, within and for the — judicial circuit, and the — district of —, begun and held at the city of — on the first Tuesday of —, being the — day of that month, in the year of our Lord one thousand eight hundred and —, and of the independence of the United States of America the —.

Present, the Honorable —, circuit [*or*, district] judge. Among the proceedings had were the following, to wit:

—, 189—.

Whereas, —, clerk, has presented to this court an account for his services for the — quarter, 18—, and in presence of —, Esq., United States attorney, has proved on oath, to the satisfaction of the court, that the services therein charged have been actually and necessarily performed as therein stated, and that per diem compensation has only been charged for days when business was actually transacted in court; and whereas said charges appear to be just and according to law, it is ordered that said account, amounting to — dollars and — cents (\$—) be and the same hereby is approved.

The United States of America,

— District of —, ss.

I, —, clerk of said court, do hereby certify that the foregoing is a true copy of an order entered upon the journal of said court.

Witness my official signature and the seal of said court, at —, —, this — day of —, 189—.

—, Clerk,
By —, Deputy.

No. 736.**Oath of Office.**

The United States of America,

— District of —, ss.

I do solemnly swear [*or, affirm*] that to the best of my knowledge and ability I will support and defend the constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the office on which I am about to enter. And I do further solemnly — that I will faithfully execute all lawful precepts directed to the marshal of the — district of —, under the authority of the United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of deputy marshal of the — district of —, during my continuance in said office, and take only my lawful fees. So help me God. —.

Sworn and subscribed before me this — day of —, 189—, — —, —.

No. 737.**Designation to Hold Circuit and District Courts.**

The United States of America,

— Judicial Circuit, ss.

To the Hon. —, Judge of the District Court of the United States for the — District of —.

Whereas, in my judgment, the public interest so requires, you are, pursuant to Section 596 of the Revised Statutes, hereby designated and appointed to hold the — term of the circuit and district courts for the — district of — at the city of —, in place or in aid of the proper district judge of

such district, and to discharge all the judicial duties of such judge from the — day of — to the — day of —, 189—, —, — 189—. Circuit Judge.

No. 738.

Summons for Jurors.

The United States of America,
— District of —, ss.

The President of the United States of America to the Marshal of the — District of —, Greeting:

We command you to summon, without delay, [*space for names*], to be and appear before our — court of the United States, within and for the district aforesaid, at the court-rooms in the city of —, on —, the — day of —, 189—, at — o'clock — M., then and there to serve as — jurors for and during the — term, 189—, of said court, and not depart the court without the leave thereof.

Hereof fail not, and have then and there this writ, with your proceedings thereon.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this — day of — 189—, and in the — year of the independence of the United States of America.

Attest: —,

Clerk — Court of the United States,
By —, Deputy.

No. 739.

Report of Committee on Application for Admission to Bar.

The United States of America,
— District of —, ss.

We, the committee appointed to examine —, esquire, of —, an applicant for admission to the bar, have the honor to make the following report.

We find the applicant to be a member of the bar of the several courts of the state of —, in good standing, of good moral character, and qualified to practice in the courts of the United States as an attorney and counselor at law, solicitor in chancery, and proctor and advocate in admiralty, and recommend his admission accordingly.

—,
—,
—,
Committee.

No. 740.

Certificate of Admission to the Bar.

The United States of America,
— Circuit and
— District of —, ss.

Be it known, that —, Esq., has been duly examined, and regularly admitted to practice as a solicitor, attorney, and counselor at law, and proctor and advocate in admiralty, in and for the — circuit and — district of —, at the term of —, begun and holden at — on the — day of —, in the year of our Lord one thousand eight hundred and —, and is hereby authorized to appear as such, according to the rules and practice of said courts, the laws of the United States and the state of —.

In testimony whereof, I have hereunto set my name and affixed the seal of the said court, at the city of —, this — day of —, 189—, and of the independence of the United States of America the —.

—,
Clerk of the Circuit Court,
for the — district of —.

No. 741.**United States Commissioner's Certificate.**

The United States of America,

— Circuit Court,

— District of —, ss.

Be it known, that —, Esq, has been duly appointed and commissioned as a United States commissioner in and for the — circuit, and — district of —, at the term of —, begun and holden at — on the — day of —, in the year of our Lord one thousand eight hundred and ninety—. And he is hereby authorized to take acknowledgments of bail and affidavits, and to take depositions of witnesses, and to do and perform all other acts and duties, according to the rules and practice of said courts, the laws of the United States and the state of —.

In testimony whereof, I have hereunto set my name and affixed the seal of the said court, at the city of —, this — day of —, 189—, and of the independence of the United States the —.

—, Clerk.

By —, Deputy.

No. 742.**Oath of Expenses of Witness on Behalf of the United States.**

The United States of America,

— Term, 189—.

— District of —.

The United States }
vs. } — Court.
 —. }

— being duly sworn, says that he is —; that he has attended as a witness on behalf of the United States in the above-entitled cause, and has been discharged; that as such witness he has incurred and paid the following necessary expenses, to wit: —.

Subsistence en route, —.

Subsistence at —.

That he has not received, and is not entitled by the regulations of the bureau or department in whose service he is employed to claim or receive, any allowance whatever for the above expenses; that the same are due and wholly unpaid; that he has not charged, and does not intend to charge, the same, or any part thereof, against any other fund, department, or officer of the United States; and further says not.

_____,
_____.

Subscribed and sworn to before me this ____ day of _____,
189-.

_____,
Clerk ____ Court.

No. 743.

Statement of Court Funds (1).

The ____ Court of the United States,
____ District of ____.

____, ____, 189-.

Sir: I have the honor to report moneys in the custody of this court at the close of the week ending ____, 189-, as follows:

With Assistant Treasurer U. S. at ____, ____, .	\$ _____
With ____ National Bank of ____, ____, . . .	_____
With ____ National Bank of ____, ____, . . .	_____
Held otherwise,	_____
	\$ _____
	_____, Clerk.

The Treasurer of the United States.

NOTE—This statement should be made and forwarded to the Treasurer of the United States at the close of business on Saturday of each week.

No. 744.**Receipt to Clerk for Money Paid Out.**

Original (1).

Clerk's Office of the United States — Court,
— District of —.

\$ —. —, —, 189—.

Received of —, clerk of the United States — court,
the sum of — dollars, on account of —, during the six
months ending —, 18—.

(1) Have a duplicate like original.

No. 745.**Receipt by Clerk for Money Received.**

—	}	Clerk's Office,
vs.		— Court, — District of —.
—.		Doc. —. No. —.

—, —, 189—.

Received of —, — dollars, being —, which amount
is also receipted on docket.

—, Clerk.

—, Deputy.

NATURALIZATION OF ALIENS.

No. 746.

Naturalization. (Declaration of Alien under Eighteen Years.)

To the Honorable the District Court of the United States
for the — District of —.

Your petitioner, A. B., respectfully represents that he is a native of Great Britain, and came from thence to the city of Cincinnati, in the United States of America, in the year 1889, and that he has continued to reside in the United States, and has resided one year, at least, in the State of Ohio, where he now resides; that he came to the United States at or about the age of seventeen years; that it has been his intention since his said arrival to become a citizen of the United States; that he is now twenty-two years of age.

A. B.

Sworn to and subscribed before me this ninth day of January, 1894.

B. R.,

Clerk of said Court.

The District Court of the United States,
for the — District of —, ss.

This day appeared in open court, C. D., a citizen of the United States, and, being duly sworn, says that A. B., the foregoing petitioner, has resided more than five years next preceding this his application to be admitted to citizenship within the United States, and more than one year in the state of Ohio; that during that time he has behaved as a

man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. C. D.

Sworn to and subscribed before me this ninth day of January, 1894. B. R.,

[*Seal.*]

Clerk of said Court.

No. 747.

Certificate of Naturalization of an Alien under Eighteen Years.

The United States of America.

The President of the United States of America to All who shall see these Presents, Greeting:

Know ye, that on the 9th day of March, anno Domini 1894, at a term of the district court of the United States for the southern district of Ohio, personally came A. B., a native of Great Britain, who proved to the satisfaction of the court that he came to the United States before arriving at the age of eighteen, and has resided therein continuously for more than five years, and that since his arrival it has been his intention to be naturalized and become a citizen of the United States; and also proved to the satisfaction of the court that he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. And having fully complied with the laws of the United States in relation to the naturalization of aliens, the said A. B., on being admitted by the court, took the oath to support the constitution of the United States of America, and to absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatsoever, and particularly to Great Britain and Ireland, whose subject he was.

This is, therefore, to certify that the said A. B. is a citizen of the United States.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said district court, at the city of Cincinnati, this 9th day of March, 1894, and in the 118th year of the independence of the United States of America.

[Seal.]

B. R.,
Clerk of said Court.

No. 748.

**Affidavit for First Papers—Naturalization, Declaration,
and Oath of Allegiance.**

The United States of America,
District of ———.

The declaration of A. B., a native of Great Britain, aged about thirty-five years, bearing allegiance to Great Britain [*or as may be*], who came from thence to the City of New York, in the United States of America, in the year 1889.

I do solemnly swear that it is *bona fide* my intention to become a citizen of the United States of America, and to absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatsoever, and particularly to the Queen of Great Britain and Ireland [*or as may be*], whose subject I am, according to the several acts of congress in such case made and provided, so help me God.

A. B.

Sworn to before me this ninth day of March, 1891.

[Seal.]

B. R.,
Clerk of said Court.

No. 749.

First Papers—Declaration of Intention.

The United States of America.

The President of the United States of America to All who shall see these Presents, Greeting:

Know ye, that on the ninth day of March, anno Domini 1891, at a term of the district court of the United States for the southern district of Ohio, comes A. B., a native of Great Britain [*or as may be*], aged about thirty years, bearing allegiance to Queen Victoria [*or as may be*], who came from thence to New York, in the United States of America, in the year 1889, and who intends to reside within the jurisdiction and under the government of the United States, and makes report of himself for naturalization, and declares on oath that it is *bona fide* his intention to become a citizen of the United States of America, and to absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatsoever, and particularly to the Queen of Great Britain and Ireland, whose subject he is, according to the several acts of congress in such case made and provided.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said district court at the city of Cincinnati, this ninth day of March, 1891, and in the one hundred and fifteenth year of the independence of the United States of America.

B. R.,
Clerk of said Court.

No. 750.

Affidavit for Certificate of Naturalization.

To the Honorable the District Court of the United States
for the Southern District of Ohio.

Your petitioner, A. B., respectfully represents that he is a native of Great Britain [*or as may be*], and came from thence to the city of New York, in the United States of America, in the year 1889, and that he has continued to reside in the United States, and has resided one year at least in the state of Ohio, where he now resides; that he filed his declaration of intention to become a citizen of the United States in the [*name of court*], on the — day of —, the evidence which, under the seal of said court, is herewith presented to your honorable court, and that he desires to become a citizen of the United States.

A. B.

Sworn to and subscribed before me this 12th day of June,
1894.

B. R.,

[*Seal.*]

Clerk of said Court.

The District Court of the United States,
for the Southern District of Ohio, ss.

This day appeared in open court C. D., a citizen of the United States, and, after being duly sworn, says that A. B., the foregoing petitioner, has resided more than five years next preceding this his application to be admitted to citizenship within the United States, and more than one year in the state of Ohio; that during that time he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same.

C. D.

Sworn to and subscribed before me this 12th day of June,
1894.

B. R.,

[*Seal.*]

Clerk of said Court.

No. 751.**Certificate of Naturalization. (Final Papers.)**

The United States of America.

The President of the United States of America to All who shall see these Presents, Greeting :

Know ye that on the 12th day of June, anno Domini 1894, at a term of the district court of the United States for the southern district of Ohio, personally came A. B., a native of Great Britain, who produced a certificate of his intention to be naturalized and become a citizen of the United States, and also proved to the satisfaction of the court that he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. And having fully complied with the laws of the United States in relation to the naturalization of aliens, the said A. B., on being admitted by the court, took the oath to support the constitution of the United States of America, and to absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatsoever, and particularly to the Queen of Great Britain and Ireland, whose subject he was.

This is, therefore, to certify that the said A. B. is admitted a citizen of the United States.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said district court at the city of Cincinnati, this 12th day of June, 1894, and in the 118th year of the independence of the United States of America.

[Seal.]

B. R.,
Clerk of said Court.

MARSHAL'S BLANKS.

No. 752.

Notice to Appear as Witness (1).

To —.

By virtue of a subpoena, issued out of the district [*or*, circuit] court of the United States, for the — district of —, and herewith shown unto you, you are required to be and appear before the said court, at —, on —, the — day of — 189—, on behalf of the United States, and not to depart said court without leave. If you fail to obey such subpoena, you may be fined and imprisoned, as the court shall direct.

—,
United States Marshal
for the District of —.

—,
Deputy.

Take notice.—You will (if you appear at the place appointed, and continue in court) be entitled to \$1.50 per day for attendance, and five cents per mile each way for necessary travel, but if you are called on the first day or any other day, either in the forenoon or afternoon, and fail to answer, your fees for the day may be deducted, and a fine imposed on you by the court. Hand this notice to the U. S. District Attorney on your arrival at court.

(1) This notice is used in some districts.

No. 753.**Return of Marshal of Service of Subpœna.**

The United States of America,

— District of —, ss.

I received this writ at Cincinnati, at — o'clock — M., on the — day of —, 18—, and served the same by copy as follows:

Personally, on —, at — o'clock — M., on the — day of —, 189—.

At residence, —, at — o'clock, — M., on the — day of —, 189—.

And the other persons named in said writ are "not found" in said district this — day of —, 189—.

The distance from the court to the place of service most remote therefrom is — miles; and the extra travel necessary to serve the other persons named herein is — miles; and my actual and necessary expenses in serving this writ are, by dates and items, as follows:

18—, — —, I paid to —, for —, \$—.

Total expenses, \$—.

U. S. Marshal,

Per —, Deputy.

No. 754.**Marshal's Summons for Juror.**

The United States of America,

— District of —.

To —.

U. S. Marshal's Office,

—, 189—.

Sir: You are hereby summoned to attend as a — juror at the — court of the United States, for the — district of —, to be held in the United States court-house at —,

in the county of —, on Monday, the — day of — next,
at — o'clock A. M. Hereof fail not.

Given under my hand the day and year above written.

—,
United States Marshal
for the — District of —.

No. 755.

Claim of Juror for Fees.

The United States,

To —, Dr.

For attendance as — upon the — court of the United
States for the — district of — on the following days, viz.:

— days at \$2.00 per day, \$—.

Received, —, —, 189—, of —, marshal of the United
States for said district, — dollars, in full of the foregoing
account. —.

No. 756.**Order to Pay Witness Fees (1) (Payroll).**

The United States of America,

— District of —, ss.

The United States of America } Cause No. —. Before —, Commissioner of the United States

vs. }

— Court within and for said District. Defendant charged
with —. Cause disposed of on the — day of —, 189—.

NAMES OF WITNESSES.	RESIDENCE.	FOR ATTENDANCE.		FOR TRAVEL.		TOTAL.	WITNESSES' ORIGINAL SIGNATURES RECEIPTING FOR AMOUNT PAID.
		DAYS.	AMOUNT.	MILES.	AMOUNT.		

I hereby approve and certify to the materiality and importance of each of the above-named witnesses in behalf of the United States, in the cause designated above.

Witness my official signature, this — day of —, 189—.

United States District Attorney for said District.

The several persons named above having attended the examination in the above cause as witnesses on the part of the United States, it is hereby ordered that the marshal pay to them the sums set opposite to their respective names, for attendance the number of days, and travel the number of miles, stated above.

Witness my official signature, this — day of —, 189—.

Commissioner of the — Court in and for said District.

(1) See R. S., Secs. 848, 855, and 981.

No. 757.**Certificate as to Executions.**

The United States of America,

— District of —, ss.

I, —, marshal of the United States, within and for the district aforesaid, do hereby certify that I have no executions in my hands issued out of any of the courts of the United States requiring me to levy upon goods or chattels, lands or tenements owned by —.

In witness whereof, I have hereunto set my hand, at —, this — day of —, 189—.

United States Marshal.

By —, Deputy.

No. 758.**Commission of Deputy Marshal.**

The United States of America,

— District of —.

To All who shall see these Presents, Greeting:

Know ye, that reposing special trust and confidence in the integrity, ability, and diligence of —, of — county, —, I have appointed him a deputy marshal of the United States, in and for the — district of —, and do authorize and empower him to execute and fulfill the duties of that office according to law, until this commission is revoked.

In testimony whereof I have hereunto set my hand, at —, this — day of —, 189—.

—,
Marshal of the United States,
for the — District of —.

[Add oath of office. See No. 736.]

No. 759.**Bond of Deputy Marshal.**

Know all Men by these Presents:

That we, —, as principal, and —, and —, as sureties, all of — county, and state of —, are hereby firmly bound unto —, marshal of the United States for the — district of —, in the sum of — dollars, lawful money of the United States, to be paid to the said —, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals this — day of —, 189—.

The condition of the above obligation is such that, whereas, the said —, marshal of the United States for the — district of —, has appointed the said — to be deputy marshal of the United States for the said district: Now, therefore, if the said — shall well and truly perform all and singular the duties of said office according to law, and keep the said marshal as aforesaid harmless and indemnified on account of his acts as such deputy marshal, then this obligation to be void; otherwise to remain in full force and virtue.

Executed in the presence of

—.
—.
—.

— [Seal.]
— [Seal.]
— [Seal.]

The State of Ohio,
— County.

I hereby certify that —, sureties on the bond of —, deputy United States marshal for the — district of —, are good for the amount of said bond. —,

County Treasurer of — County.

No. 760.**Oath of Special Deputy Marshal.**

The United States of America,

— District of —, ss.

I, —, having been duly appointed a special deputy United States marshal for the — district of the — ward of the city of —, —, by —, United States marshal for the — district of —, do solemnly swear that I will discharge and perform all the duties of my said office as special deputy marshal, faithfully and impartially. —.

Sworn and subscribed before me this — day of —, 189—.

—,
U. S. Commissioner.

No. 761.**Oath of Supervisor of Election.**

The United States of America,

— District of —, ss.

I, —, having been duly appointed a supervisor of elections in — district of the — ward, in the city of —, by the circuit court of the United States, for the — district of —, by commission, dated the — day —, 18—, do solemnly — that I will discharge and perform all the duties of my said office as supervisor, faithfully and impartially. —.

Sworn and subscribed before me this — day of —, 18—.

—,
U. S. Commissioner.

No. 762.**Voucher and Receipt for Bailiff's, Crier's, etc., Fees.**

The United States of America,

By —, United States Marshal, — District of —,

To —, Dr.

189—.

For services as — in attendance on
the United States courts for the —
district of —, for the quarter ending
—, 18—.

Attendance charged for the following
days:

1 2 3 4 5 6 7 8 9 10 11 12
13 14 15 16 17 18 19 20 21 22
23 24 25 26 27 28 29 30 31

1 2 3 4 5 6 7 8 9 10 11 12
13 14 15 16 17 18 19 20 21 22
23 24 25 26 27 28 29 30 31

1 2 3 4 5 6 7 8 9 10 11 12
13 14 15 16 17 18 19 20 21 22
23 24 25 26 27 28 29 30 31

Total number of days, —, at \$2.

—, 189—.

Received from —, United States Marshal, the sum of
— dollars, amount in full due me as above stated.

—,
—.

No. 763.

Schedule of Fees.

The United States } The Circuit Court of the United States,
v.s. } _____ District of ____.
 _____ } Charge ____.

Amount brought forward,			
Warrant issued by _____, U. S. commissioner at Columbus, O.,			
Arrested at _____, by deputy _____,			
Before _____, U. S. commissioner at _____			
Attended by deputies _____,			
Mileage from _____ to place of arrest, _____ miles, at 6 cents,			
Mileage for deputy in charge of prisoner, _____ miles, at 10 cents,			
Mileage for prisoner, _____ miles, at 10 cents,			
Mileage for guard, _____ miles, at 10 cents,			
Support of prisoner while in custody,			
Expenses endeavoring to arrest _____, _____ days, at \$2,			
Bail bond to _____ trial by U. S. _____,			
For discharge of prisoner,			
Service of warrant of commitment to _____ jail, for _____ trial _____ by U. S. court _____ commitment,			
Mileage from _____ to jail for deputy, prisoner, and _____, guard, _____ miles each, _____ miles, at 10 cents,			
Serving subpoenas at _____, on _____,			
Amount carried forward,			
Voucher No. _____. Sheet _____.			

No. 764.**Certificate for Wages of Guard of Prisoner.**

The United States of America,
 — District of —.

—, —, 189—.

I hereby certify that I have been employed and have acted — days as a guard over —, a United States prisoner, in charge of —, deputy marshal, from — to —, being a distance of — miles.

(Name of guard) —,

(Post-office address) —.

(Name of witness) —.

(Post-office address) —.

No. 765.**Account Current U. S. Marshal.**

Abstract of Fees and Expenses of —, Deputy United States Marshal for the — District of —, from —, 189—, to —, 189—:

Subvoucher No. 1,	. . . . .	\$ —
Subvoucher No. 2,	. . . . .	—
Subvoucher No. 3,	. . . . .	—
Subvoucher No. 4,	. . . . .	—

— District of —, ss.

—, deputy United States marshal for said district, being duly sworn, deposes and says that the services stated in the vouchers mentioned in the foregoing abstract, and which are thereunto attached, have been rendered in good faith, as therein stated; that the expenses charged therein were necessary, and have been paid, and that all the items charged are correct and legal, as he verily believes.

Sworn and subscribed this — day of —, 189—, before me.

—,
 Dep. U. S. Marshal.

No. 766.

Deputy Marshal's Report in Criminal Case, before
United States Commissioner.

—, —, 189-.

United States Marshal, —, —:

Sir: Below find report of my services, etc., in the case of the United States *vs.* —, charged with —, on affidavit of —.

On —, 189-, warrant was issued by —, U. S. commissioner at —, —, and received by me on —, 189-, at —, —.

I arrested the defendant on —, 189-, at —, in — county (1), —, and took — before —, U. S. commissioner at —, —. — (2).

I employed — as guard over the prisoner, who traveled from — to —, a distance of — miles.

On —, 189-, defendant — was produced before Commissioner —, and in default of bail committed to — county jail, for hearing, [*or say*, released on bail for appearance before said commissioner].

I executed warrant of commitment on —, 189-; distance to jail, — miles.

On —, 189-, Commissioner — issued a subpœna for U. S. witnesses, which I served —, 189-, on (3) —, and —, 189-, on (3) —.

In serving subpœna I traveled from — to — to serve most distant witness, being — miles, and from — to — to serve other witnesses, being — miles; total, — miles. This travel is exclusive of that on warrant.

On —, 189-, I took defendant before Commissioner —, and a — examination of the charge was had, after which defendant, —, remanded into custody [*or say*, released on bail], for —.

I executed warrant of commitment to — county jail, for trial at — court, on —, 189-. Distance to jail from commissioner's office — miles.

I employed — as guard over prisoner; guard traveled from — to —, a distance of — miles.

My expenses in this case were as follows:

In traveling to execute warrant, from receipt of writ to time of arrest (state dates and items), —.

In transporting prisoner to the commissioner's office (state dates and items), —.

For subsistence of prisoner (state dates and items), —.

In transporting prisoner to jail on temporary warrant of commitment, —.

In transporting prisoner from jail to commissioner's office for hearing (dates and items), —.

In transporting prisoner to jail on warrant of commitment for trial (dates and items), —.

For subsistence of prisoner en route to jail (dates and items), —.

In traveling to serve subpoena (dates and items), —.

Dep. U. S. Marshal.

(1) When an arrest is made at a point distant from a town or post-office, the name of nearest post-office and distance therefrom must be stated.

(2) If prisoner is taken before any other commissioner than the one before whom warrant was made returnable, the reason therefor must be given.

(3) State *places* of service, as well as names of witnesses served.

No. 767.

Deputy Marshal's Report to the United States Marshal.

Deputy Marshal's Report in — Case,
before the — Court of the United States,
for the — District of —.

United States Marshal, —. —, 189—.

Sir: Below find report of my services, etc., in the case of
— vs. —.

(2) —.

On —, 189—, writ of (3) — was issued out of said court at —, returnable on — day of —, 189—, at —.

I received said writ on the — day of —, 189—, at —, and served it as follows: On (4) —, at —, in — county, and on (4) —, at —, in — county.

The distance traveled to serve said writ on most distant person was — miles, and the additional travel to serve others, — miles; total, — miles.

On —, 189—, a warrant was issued at —, for the removal of defendant from — to — for trial. I received this writ on —, 189—, at —, and executed it on —, 189—, by delivering the defendant into the custody of —, at —. In going to serve this writ I traveled from — to —, — miles; and the distance traveled in transporting prisoner was — miles.

I employed — as a guard over prisoner, who traveled from — to —, — miles, as per his certificate herewith.

On —, 189—, a writ of attachment for witness in contempt was issued at —. I received said writ at —, on the — day of —, 189—, and served it as follows:

On (4) —, at —, in — county.

In going to serve said writ I traveled from — to —, a distance of — miles.

In transporting witness to court at — the distance traveled was — miles; I employed — as a guard over the witness, who traveled from — to —, a distance of — miles, as shown by his certificate herewith.

The witnesses were brought into court on —, 189—, and (5) — on —, 189—, a warrant of commitment to — was issued out of said court at —. I received this writ on —, 189—, at —, and executed it on —, 189—, by delivering the defendant into the custody of the warden of said prison, at —.

In transporting defendant on this writ a distance of — miles was traveled.

I employed — as a guard over prisoner, who traveled from — to —, — miles, as per his certificate herewith.

My expenses in this case were as follows:

- On writ of — (state dates and items):—.
 On warrant of removal (dates and items):—.
 Meals furnished prisoner (dates and items):—.
 On attachment for witnesses (dates and items):—.
 Meals furnished witnesses (dates and items):—.
 On warrant of commitment (dates and items):—.
 Meals furnished prisoner (dates and items):—.

_____,
 Deputy United States Marshal.

(1) Deputies will use this form in reporting Service of Court Process in either criminal or civil cases.

(2) If a criminal case, note here the charge or indictment.

(3) "Subpœna," if a criminal case, or "summons," "chancery subpœna," etc., if civil.

(4) Dates of services and names of persons served with writ.

(5) "Discharged from custody," or "committed," as the case may be.

No. 768.

Schedule of Fees for Deputy Marshals.

The United States of America,

To —, U. S. Marshal, Dr.,

For services rendered by his Deputy, —, in the following Criminal Cause, to wit:

189— { The United States } Charge: —.
 — { vs. }
 — { — }

Warrant issued by —, United States Commissioner at —, on affidavit of —, received at — on the — day of —, 189—. Executed by arresting the defendant at —, in — county, — miles from —, and taking — before —, United States Commissioner at —, — miles from the place of arrest, on the — day of —, 189—.

EXPENSES INCURRED WHILE ENDEAVORING TO ARREST DEFENDANT, VIZ.:								DOLLARS.	CENTS.
DATE.	R. R. FARE.	TEAM HIRE.	SUBSIS- TENCE.						
— days. Total expenses, \$— Amt. chargeable to the United States not exceeding \$2 for each day.									
Arrest									
— miles going, at 6 cents.									
— miles returning, self and prisoner, at 10c. each									
— miles returning, guard, at 10c.									
— meals for prisoner, at									
Warrant of commitment for temporary con- finement issued by commissioner — .									
Executed by delivering defendant to jailer of — county, at —									
Serving warrant, \$2.00. Committing defend- ant, at 50c.									
— miles to jail, self and pris. at 10c. each.									
— miles, jail to commissioner's office and return, self and prisoner, at 10c. each .									
Discharge on bail bond									
— days attendance as officer before com- missioner —									
Subpoena issued by commissioner —, for U. S. witnesses									
Served on — at —, — miles from —, and on —, — miles from —, and on —, — miles from —									
— services at 50c.									
— miles going, at 6c., in addition to mile- age charged above, on warrant									
Warrant of commitment for trial at — term 189—, issued by commissioner — . .									
Executed by delivering deft. to jailer of — county, at —									
Serving warrant, \$2.00. Committing deft. at 50c.									
— miles to jail, self and prisoner, at 10c. each									
— miles guard over prisoner, at 10c. . .									
— meals for prisoner en route to jail . .									
Discharging defendant when case fails . . .									
Total,									

The United States of America,

— District of — ss.

—, Deputy United States marshal for said district, being duly sworn, deposes and says that the services stated in the foregoing account have been rendered in good faith, as therein stated; that the expenses charged therein were necessary, and have been paid, and that all the items charged are correct and legal, as he verily believes.

Sworn and subscribed this — day of — 189—, before me.

—,
Deputy United States Marshal
for the — District of —.

No. 769.

Affidavit of Salaried Officer of the Government for Actual Expenses.

The United States of America,

To —, Dr.

For expenses incurred in attending the — term, 189—, of the — court of the United States, at the city of —, as a witness on behalf of the government in the case of the United States *vs.* —, as follows:

189				
		Fee for affidavit to this account,		25
		Total, \$		

The United States of America,

— District of —, ss.

Before me, personally appeared the above-named —, who, being duly sworn according to law, deposes and says that he is a salaried officer of the government, to wit, —;

that in obedience to a subpoena issued out of the court above stated, he necessarily incurred the expenses above set forth for travel and subsistence, and that by the regulations of the —, in which he is employed he is not entitled to receive and has not received, and will not claim therefrom, any allowance whatever for the same.

Sworn and subscribed this — day of —, 189—, before me.

No. 770.

Voucher for Fees and Expenses of Deputy Marshal.

Subvoucher, No. —.

The United States of America,

To —, United States Marshal, Dr.

For fees and expenses of Deputy — in the following case, viz.:

The United States	}	In the — Court of the United States,
v/s.		for the — District of —, issued at
—		—, 189—, —; Ret. at —; 189—;
—.		Rec'd by Dep. at —, 189—; Served
		as follows:

189		On	
		— services, at —	
		— miles, going only from —	
		to — at 6c.	
		— miles, extra travel from —	
		to — at 6c.	
		Actual expenses charged in lieu of mile-	
		age, viz.	



INDEX.

Acceptance—	FORM	PAGE
of service by attorney,	14	13
of service of citation,	668	623
of service of notice,	14	13
Admiralty.		
affidavit to obtain attachment on libel for wages, .	626	592
answer and cross libel,	580	559
by an agent or consignee with claim interposed, .	579	558
general form,	576	556
to a libel <i>in personam</i> ,	577	557
attachment <i>in personam</i> ,	599	573
claim and answer,	578	557
by the United States attorney on behalf of the		
United States for forfeiture and for duties in a		
case of salvage of a foreign ship and cargo, .	582	560
of owner,	581	560
certificate of magistrate,	628	593
commissioner's report,	615	585
cost bond by libel and <i>in personam</i> ,	595	570
decree dismissing libel,	601	576
for libellant,	602	576
for libellant when vessel has been released on		
bond,	604	577
for salvage,	608	579
for sale of perishable property,	610	580
for sale of vessel,	609	579
for wages,	605	577
in proceedings for limitation of liability in ad-		
miralty,	611	580

Admiralty—Continued.

	FORM	PAGE
<i>in rem</i> for sale of vessel,	603	577
on mandate in admiralty,	633	597
<i>pro confesso</i> ,	606	578
<i>pro confesso</i> to a libel <i>in rem</i> ,	607	578
exceptions to commissioner's report,	616	586
to a libel,	583	562
to a libel, pre-emptory,	584	563
information in admiralty,	571	547
justification of sureties,	590	567
libel against consignee for freight on a bill of lading,	564	540
against master for assault and beating or im- prisonment,	567	543
against merchandise for possession,	550	520
against vessel for repairs,	538	509
against owner for wages,	563	540
by mariner for wages,	539	510
by mariner for wages after ship has left port, . .	542	513
by mariner for wages without written contract, .	541	512
for wages on a boat on navigable rivers and lakes, .	544	514
for wages on discharge before beginning voyage, .	543	513
by insurers for loss by collision,	555	531
by a part owner against his partner for security for the safe return of the vessel,	551	521
for compensation by a superintendent for the building of a ship,	560	538
for damage by collision,	554	528
for lockage in a public navigable river,	566	542
for pilotage in extraordinary danger,	547	517
for pilotage under state regulations,	546	516
for pilotage to sea,	545	515
for salvage,	552	523
for supplies,	561	539
for supplies with attachment clause,	562	539
for the nonfulfillment of a contract for transporta- tion of goods,	549	519
for wharfage (<i>in rem</i>),	548	518
for wharfage (<i>in personam</i>),	565	541

Admiralty—Continued.

	FORM	PAGE
general form of libel of information,	571	547
<i>in personam</i> ,	556	535
with prayer for attachment of goods, etc.,	557	536
with prayer for monition,	558	537
<i>in rem</i> ,	537	508
<i>in rem</i> and <i>personam</i> ,	569	545
interrogatory clause in prayer,	559	537
intervening libel,	570	546
on a bottomry bond against the vessel, freight, and cargo,	553	526
to enforce decree of court of admiralty of an- other district,	568	544
mandate in admiralty,	632	596
monition and attachment,	598	572
notice for publication,	624	591
of appeal in admiralty,	629	594
of appraisement,	620	588
of motion,	625	592
to appraisers,	618	587
oath by corporation to a libel or answer,	586	564
by proctor to a libel or answer,	588	565
of agent or attorney in fact to a libel or answer,	587	564
of appraisers,	619	587
to libel or answer,	585	563
order appointing appraisers,	617	587
for mandate in admiralty,	631	595
for transfer to trustee,	622	588
of the court on the return of mesne process <i>in rem</i> ,	612	584
petition against proceeds in the registry,	574	554
against proceeds in the registry against the claimant,	575	555
for limitation of liability,	572	548
of appeal,	630	594
to bring in vessel under rule 59,	573	552
preliminary summons for seamen's wages,	627	593
proclamation on the return of process <i>in rem</i> ,	613	584
report of appraisers,	621	588
replication to claim and answer,	614	584

Admiralty—Continued.

	FORM	PAGE
schedule to be attached to libel for wages,	540	512
stipulation by defendant on arrest in an action <i>in personam</i> ,	593	569
for costs by claimant,	592	568
for costs by libellant <i>in personam</i> ,	591	568
for costs by libellant in a suit <i>in rem</i> ,	589	566
for release of vessel,	596	571
for the safe return of a ship,	594	569
summons (preliminary) for seamen's wages,	627	593
transfer to trustees,	623	590
verification of pleadings (<i>see Oath</i>).		
warrant of restitution,	597	572
writ of seizure,	600	574

Affidavit—

of attendance of witnesses,	448	401
of complaint before commissioner,	437	393
for search warrant (internal revenue),	451	403
for search warrant under act of July 10, 1891, . . .	453	404
of service of citation,	669	623
to be annexed to a bill of interpleader,	105-107	113
to obtain a <i>ne exeat</i> ,	239	206
to obtain attachment on libel for wages,	626	592
to bill, answer, etc. (<i>see Verification</i>),		
to petition for writ of <i>habeas corpus</i> ,	525	499
of service of notice,	256	216

Amendment—

to answer,	236	204
to answer in patent case,	370	338
to bill,	235	203

Ancillary Proceedings—

affidavit to petition,	326	288
bill, ancillary, for foreclosure of railway,	317	277
<i>in re</i> receivers for a manufacturing company		
where receivers were appointed by a state		
court before a federal court took jurisdiction,	316	270
supplemental for foreclosure of railway, . . .	318	278
certified proceedings before magistrate,	328	291
commissioner's report on intervention,	334	300

Ancillary Proceedings.—Continued.

FORM PAGE

decree,	337	303
taking ancillary jurisdiction,	319	280
confirming master commissioner's report on in-		
tervention,	335	302
master's report on intervention,	334	300
motion to refer intervention to special master,	329	293
to restrain receivers in accordance with the		
above petition,	333	300
notice of petition,	324	286
oath of special master commissioner,	321	284
to petition,	326	288
order appointing commissioner to hear and report		
claims,	320	283
ancillary, confirming and directing sale to a re-		
organized manufacturing company,	338	304
granting leave to intervene,	331	298
that receivers give notice to stockholders by		
publication,	323	285
to file amendment, and extending receivership,	322	284
petition for an order authorizing receivers to de-		
liver possession of railway property,	336	302
for order limiting time to present claims, etc.,	325	286
of intervention,	327	289
of intervention (another form),	330	293
of intervention (<i>in re</i> manufacturing company),	332	299
verification of petition,	326	288

Answers—

admiralty,	576	556
by an agent or consignee with claim interposed,	579	558
and cross libel,	580	559
to a libel <i>in personam</i> ,	577	557
allegations used in framing,		181
accounts (reference to book containing them),	189	181
refused, as being useless, before decree,	190	181
admission for purposes of the suit,	191	181
claim of benefit of same defense to amended, as		
to original bill,	206	187
claims made by defendant,	192	182

Answers—Continued.

	FORM	PAGE
craving leave for greater certainty,	193	183
to refer to codefendant's answer,	194	183
information and belief,	195	183
ignorance,	196	184
qualified denial,	197	184
reference to schedule,	198	184
release, craving some benefit as if pleaded, . . .	199	185
settled accounts, claim of,	200	185
submission by trustees to act,	201	185
traverse,	202	185
trustee, desire to be discharged,	203	186
vexatious suit; settled accounts; claim of benefit, of defense, as if raised by plea or demurrer, . .	204	186
verification of answer,	188	180
want of interest in plaintiff; craving some benefit as if defense by demurrer,	205	186
commencement of,	176	177
by an infant,	178	177
by husband and wife,	179-80	177
by a lunatic or idiot, etc.,	182	178
by wife separately, under an order,	183	178
where the bill misstates the names of defendants,	181	178
where there is only one defendant to an original bill,	177	177
conclusion of,	187	180
first paragraph of,	184	179
by a formal party who is a stranger to the facts, .	185	179
by an infant,	186	179
of an executrix submitting to act under the in- demnity of the court,	207	187
of the executors of a deceased acting executor to a bill of revivor,	208	188
of jailer to rule to show cause,	535	505
of a widow electing to take the bequests made to her by a will, and to release all interest in the devised estates,	209	190
patent case, in a,	354	330
alleging imperfect specification,	356	333

Answers—Continued.

FORM PAGE

abandonment,	363	336
defective specification,	357	334
invention by another person,	364	336
limitation of claims of patent by proceedings in the patent office,	360	335
limitation of duration of patent by a prior for- eign patent,	365	336
denying assignee's right to sue,	355	333
grant of licenses and public acquiescence, . . .	361	335
plaintiff's title,	362	336
prior adjudication,	359	334
utility,	358	334
suits at law, in a,	7	9
supreme court, in the,	709	674

Appeal—

entry allowing (<i>habeas corpus</i>),	531	503
petition of assignment of errors on,	536	502
to the circuit court of appeals,	529	501
in admiralty,	680	629

Appearance, 11 12

by defendant in person,	13	12
for special pleading,	12	12

Appellate Jurisdiction of Supreme Court (*see*

<i>Appellate Proceedings</i>),	656	613
---	-----	-----

Appellate Proceedings—

acceptance of service by attorney,	668	623
affidavit of service of citation,	669	623
appeals in admiralty,	680	629
appearance,	682	630
assignment of errors (suit at law),	658	615
of errors in the supreme court of the United States,	659	616
of error on appeal,	672	625
bond on appeal,	673	626
on writ of error,	662	618
certificate by clerk under 9th rule of the supreme court,	694	636
of questions by circuit judges to the supreme court,	684	631

Appellate Proceedings—Continued.	FORM	PAGE
citation,	667	622
on appeal,	674	627
decree,	676	627
annulling former decree and revoking a mandate,	677	628
of dismissal framed to prevent prejudice,	679	629
explanation,	656	613
<i>habeas corpus</i> ,	693	636
joinder in error,	660	617
judgment,	670	624
error to state court,	665	621
mandate,	695, 696	637
motion to dismiss,	687	633
to dismiss or affirm,	688	633
notice of submission of motions,	686	632
order and decree where the court has no jurisdiction,	678	628
allowing writ of error,	661	617
dismissing cause for failure to print,	691	635
dismissing cause under rule,	692	635
dismissing cause on motion filed,	689	634
dismissing case on call,	690	634
on petition for writ of <i>certiorari</i> ,	699	654
petition on appeal,	671	625
for writ of <i>certiorari</i> to circuit court of appeals,	697	640
on writ of error,	657	614
receipt for record,	683	631
return by clerk of writ of error,	666	621
service of citation,	675	627
stipulation reducing record,	681	630
verification to writ of <i>certiorari</i> ,	698	654
writ of <i>certiorari</i> ,	685	631
of error,	663	619
of error to state court,	664	620
Application—		
for discharge (poor convict),	456	407
for review and reversal of decisions of the board of general appraisers under the customs law,	8	10

Assignment—	FORM	PAGE
of errors (suit at law),	658	615
of errors in the supreme court of the United States,	659	615
of error on appeal,	672	625
Attachment Bond ,	50	34
<i>in personam</i> ,	509	573
to compel answer,	228	201
Bench Warrant for Removal ,	466	414
Bills of Complaint—		
affidavit to,	85	53
against an agent for mismanagement,	108	114
an executor by legatees and the administrator of		
a deceased legatee,	95	77
by husband of legatee against executor,	93	72
by an executor and trustee under a will to carry		
the trusts thereof into execution,	96	80
by foreign consul against a citizen of the United		
States,	700	655
by one state against another to settle the bound-		
ary,	701	655
caption and address,	67	45
charging part,	72	47
commencement,	68	45
by other than an individual,	69	46
confederating part,	71	46
copyright case,	413	367
creditor's bill against a corporation and its stock-		
holders to enforce statutory liability,	87	56
by simple contract, creditors against executors		
of deceased debtor for payment of his debts,	86	54
for dissolution of a partnership,	88	60
foreclosure of mortgage,	90	65
for an account of partnership dealings after a disso-		
lution, and for a receiver,	89	63
formal parts of a bill, (see below).		
for the settlement of a boundary between states,	702	656
interrogating part,	74	48
introduction,	68, 69	45, 46

Bills of Complaint—Continued.	FORM	PAGE
jurisdiction clause,	73	47
oath to bill,	85	53
of interpleader (old English form),	103	109
of review for new matter,	119	135
of review to examine and reverse a decree,	117	133
of revivor and supplement where both parties in original bill are deceased,	116	131
of revivor (before decree) by the administrator of the plaintiff in the original suit,	115	129
on behalf of infant legatees,	94	74
patent case, in a,	339	307
in the nature of a supplement bill. Allegation when patent has been assigned pending suit,	344	313
setting forth prior adjudication,	343	312
to cancel an interfering patent,	345	314
to compel issue of patent,	346	317
where an assignment of the patent has been made before bringing the suit,	340	311
where a reissued patent is sued on,	341	312
where the suit is brought by the administrator of a patentee,	342	312
prayer for injunction,	77	50
for the production of deeds, papers, etc.,	78	50
for process where the government is a defend- ant,	81	52
for relief,	75, 76	49, 50
for subpoena,	79, 80	51
for writ of <i>certiorari</i> ,	83	52
for writ of <i>ne exeat</i> ,	82	52
of bill of interpleader,	194	112
signature of,	84	53
stating part,	70	46
supplemental bill,	110	119
against the assignee of a bankrupt defendant,	111	125
in a patent case,	113	127
to an original and amended bill filed by a lessee for the specific performance of an agreement to grant a further lease,	112	126

Bills of Complaint—Continued.

FORM PAGE

to cancel decree of naturalization,	101	103
a written instrument, (a bill of exchange),	97	84
to enforce a lien against a distillery,	102	108
specific performance of a contract to make a		
policy of insurance,	98	89
to enjoin the obstruction of a river,	100	100
to have goods redelivered which have been de-		
posited as a security for money lent,	91	68
to perpetuate testimony,	114	127
to redeem by purchaser of an equity of redemption		
from the assignee in insolvency of the mortgagor, .	92	69
to reform a policy of insurance,	99	95
to set aside a decree obtained by fraud,	121	139
to suspend a decree,	120	137
to subject property of absent defendant to pay a		
judgment,	715	677
trade-mark (common law),	415	379
registered in the United States patent office, . .	414	371
verification	85	53

Bond—

for costs,	36	23
in admiralty,	595	570
in place of injunction,	385	344
on appeal,	673	626
on writ of error,	662	618
on removal from state court,	638	601
upon a <i>ne exeat</i> ,	242	207

Capias ad respondendum,	500	483
--	-----	-----

Caption,	I	7
---------------------------	---	---

for depositions <i>de bene esse</i> ,	24	17
---	----	----

Certificate—

at close of depositions,	25	17
of counsel,	649	609
of discharge of poor convict,	459	409
of extradition proceedings,	463	412
of magistrate,	628	593
of naturalization,	751	708
to the supreme court,	684	631
under 9th rule of the supreme court,	694	636

Certiorari—	FORM	PAGE
for removal of a cause from a state court,	653	611
petition for writ to court of appeals,	697	640
Citation—		
on appeal,	674	627
on error,	667	622
to appellee,	59	40
to defendant in error,	60	41
Claim and Answer,	578	557
by the United States attorney on behalf of the United States for forfeiture and for duties in a case of salvage of a foreign ship and cargo,	582	560
of owner,	581	560
Clerk's Blanks—		
certificate as to official character of clerk by a judge,	727	687
as to official character of judge by the clerk of court,	728	688
as to searching record,	729	688
of admission to the bar,	740	699
for copy,	726	687
of copy of entry allowed in chambers,	725	686
certified copy of entry,	724	685
commissioner's certificate of appointment,	741	700
designation to hold circuit and district courts,	737	697
entry, general form of,	723	685
oath of expenses of witness on behalf of the United States,	742	700
of office,	736	697
order approving clerk's account,	735	696
of court to pay account,	730	689
quarterly statement of clerk,	734	695
receipt by clerk for money received,	745	702
to clerk for money paid out,	744	702
report of committee on application for admission to bar,	739	698
schedule No. 1,	731	690
schedule No. 2—civil cases,	732	693
schedule No. 3—criminal cases.	733	694

Clerk's Blanks—Continued.

FORM PAGE

statement of court funds, 743 701

summons for jurors, 738 698

Contempt Proceedings—

entry of distribution, 396 354

motion for rule to show cause, etc., for contempt, . 389 347

order granting motion for contempt, 390 348

adjudging defendant guilty of contempt and fining

him, 393 349

adjudging party guilty of contempt (another

form, 394 349

fining defendant for contempt 395 350

return of rule by marshal, 392 348

rule to show cause, 391 348

Copyrights and Trade-Marks—

amendment, 422 389

appearance, 420 388

bill in equity, common law trade-mark, 415 379

infringement of a copyright, 413 367

trade-mark registered in the patent office, . . . 414 471

assignment before bringing suit, 416 385

prior adjudication, 417 386

contempt proceedings, 431 390

costs, 427 389

declaration at law in copyright case, 418 386

at law, infringement of a registered trade-mark, . 419 386

decree, final (copyright case), 433 390

final (trade-mark case), 434, 435 391

dismissing bill, 432 390

depositions, 425 389

de bene esse, 426 389

injunction. (See perpetual and preliminary.)

limiting time within which to take evidence, . . . 424 389

master, 429 390

perpetual injunction, 436 392

preliminary injunction, 430 390

replication, 423 389

security for costs, 421 388

stipulation to submit cause on brief, 428 389

writ of injunction, 436 392

	FORM	PAGE
Cost Bill,	28	20
Cost Bond,	36	23
to libel <i>in personam</i> ,	595	570
Commissioner's Report,	615	585
Commissioner, U. S. (<i>See under Criminal Proceedings.</i>)		
Complaint,	2-7	9
for warrant,	460	410
Criminal Proceedings—		
affidavit of petitioner for <i>habeas corpus</i> ,	525	499
answer of jailer to the rule to show cause,	535	505
appeal, entry allowing,	531	503
petition of assignment of errors,	530	502
to the circuit court of appeals,	529	501
<i>capias ad respondendum</i> ,	500	483
<i>commissioner, before a United States.</i>		
affidavit of attendance,	448	401
of complaint,	437	393
for search warrant under act of July 10, 1891,	453	404
for search warrant (internal revenue),	451	403
application for discharge of poor convict,	456	407
bench warrant for removal,	466	414
certificate of discharge of poor convict,	459	409
of extradition proceedings,	463	412
complaint for warrant,	460	410
fee bill,	467	416
final commitment,	462	412
<i>mittimus</i> ,	444	398
recognizance for appearance before circuit or		
district court,	442	396
extradition, complaint for,	460	410
extradition warrant,	461	411
mandate to jailer to produce prisoner,	457	407
oath of poor convict,	458	408
order to pay witness,	449	401
poor convict,		407
proceedings where offender is arrested in one		
state for offense committed in another state		
before indictment,	464	413
after indictment,	465	414

Criminal Proceedings—Continued.

FORM PAGE

recognizance of witnesses,	446	399
release of sureties,	441	396
return by marshal of <i>mittimus</i> ,	445	399
seaman's wages—proceedings before commis-		
sioner,	455	406
search warrant (internal revenue),	452	404
under act of July 10, 1891,	454	405
subpoena for witnesses,	447	400
surety to bond, justification of,	440	395
transcript from commissioner,	450	402
temporary <i>mittimus</i> ,	443	397
recognizance,	439	394
warrant of arrest,	438	394
criminal information,	496	476
demurrer to an indictment or information,	511	490
to a plea in bar,	513	491
entry discharging jailer,	536	507
ordering discharge of prisoner,	528	501
of distribution upon payment of fine,	522	495
the finding of the court,	527	500
final commitment,	523	496
granting motion for rule, etc.,	533	504
<i>indictment.</i>		
against a retail liquor dealer selling liquor, for		
not paying special license tax,	494	475
demanding illegal fees of pensioner in violation of		
Revised Statutes, Section 5485, as amended July		
4, 1884,	488	463
embezzling money order and postal funds,	483	453
embezzlement of letters,	482	451
falsely personating another in violation of R. S.,		
Section 5435,	485	456
an officer of the United States,	486	458
forging indorsement on money order,	490	466
forgery—violation of R. S., Sections 5414, 5421,		
and 5431,	489	465
general form of indictment,	471	419
indictment for perjury,	491	467

Criminal Proceedings—Continued.	FORM	PAGE
making and presenting false claim for pension, etc.,	487	460
making counterfeit coin,	492	472
mailing libelous postal cards,	477	444
lottery circulars,	476	442
obscene letter,	479	447
national bank officer embezzling, etc., funds,	473	422
misapplication of funds by,	472	420
passing counterfeit money,	493	474
robbing post-office,	480	448
scheme to defraud—misuse of mails	475	438
stealing personal property of the United States,	484	455
taking obscene pamphlet from the mail,	478	446
using mails concerning scheme to defraud,	474	433
violation of postal laws,	481	450
information, admiralty,	498	478
general form,	496	476
libel of—seizure of a distillery,	499	478
seizure under the revenue laws,	497	476
joinder to demurrer,	512	491
to a demurrer to a plea,	514	492
motion in arrest of judgment,	521	495
for rule against jailer to show cause, etc.,	532	504
to quash indictment,	503	485
oath or affirmation of foreman of grand jury,	469	418
or affirmation of grand jurors,	470	418
petition for removal of a criminal case from a state court,	495	475
for writ of <i>habeas corpus ad testificandum</i> ,	516	493
for writ of <i>habeas corpus</i> ,	524	497
plea of misnomer,	504	487
replication to a,	506	487
verification of,	505	487
<i>nolo contendere</i> , journal entry on,	515	492
of former jeopardy (acquittal),	510	490
of former jeopardy (conviction),	509	489
special,	507	488
recognizance for appearance before the court,	501	483

Criminal Proceedings—Continued.	FORM	PAGE
replication to special plea,	508	488
rule for jailer to show cause, etc.,	534	505
temporary <i>mittimus</i> ,	502	484
verdict, guilty,	518	494
guilty to part of the counts only,	519	495
not guilty,	520	495
writ of <i>habeas corpus ad testificandum</i> ,	517	494
of <i>habeas corpus</i> ,	526	500
of venire for grand jury,	468	418
Customs Law Case—		
declaration in,	8	10
judgment in,	721	682
petition on appeal,	722	683
Declarations—		
at law in copyright case,	418	386
at law, infringement of a registered trade-mark,	419	386
by an alien against a citizen of the United States,	5	8
by a copartnership against a copartnership,	4	8
by a corporation against a corporation,	3	8
by an individual against an individual,	2	7
by the United States,	6	9
for infringement of a patent,	408	361
Decrees—		
annulling former decree and revoking a mandate,	677	628
appointing special master,	274	225
appellate court, in,	676	627
dismissing bill,	268-260	221
libel,	601	576
framed to prevent prejudice,	679	629
without prejudice, stating reasons,	270	221
final (copyright case),	433	390
(patent case),	409	360
(trade-mark case),	434, 435	391
for libellant,	602	576
for libellant when vessel has been released on bond,	604	577
for salvage,	608	379
for sale of perishable property,	610	580
for sale of vessel,	609	579
for wages,	605	577

Decrees—Continued.

	FORM	PAGE
in proceedings for limitation of liability in admiralty,	611	580
<i>in rem</i> for sale of vessel,	603	577
on mandate in admiralty,	633	597
<i>pro confesso</i> ,	398	352
<i>pro confesso</i> ,	606	678
<i>pro confesso</i> ,	225	200
<i>pro confesso</i> sustaining patent,	226	201
rescinding contract for fraud,	271	222
reversing decree,	273	225
sale,	262	219
specific performance of agreement for policy of insurance,	272	224
subjecting absent defendant's property to payment of judgment,	719	680
sustaining patent,	401	353
to a libel <i>in rem</i> ,	607	578
Dedimus potestatem ,	38	25
Demand of oyer ,	17	14

Depositions—

certificate at close of	260	218
certificate at close of depositions <i>de bene esse</i> ,	25	17
commencement for	259	217
commencement for depositions <i>de bene esse</i> ,	24	17
notice to take,	253-255	214
notice to take <i>de bene esse</i> ,	22	16
transmission of,	26	18

Demurrers—

affidavit or oath to a	133	146
and answer,	138	149
certificate of counsel,	134	146
conclusion where the demurrer is to part, or to the relief,	131, 132	145
for multifariousness,	143	153
for want of equity,	136	147
for want of jurisdiction, in supreme court,	712	675
for want of parties,	142	153
for want of a suggestion that the evidence of the plaintiff's demand is not in his power,	140	152

Demurrers—Continued.	FORM	PAGE
introduction to a demurrer to the whole of the bill	127	144
on the ground of the statute of frauds,	150	157
patent case,	349	323
plea and answer,	139	150
title and commencement,	122-126	143
to bill omitting several grounds,	137	148
to a demurrer to the whole of the bill,	129, 130	145
to a bill brought for part of a matter only,	144	155
to a bill for relief filed by a person beneficially entitled where a right of action at law was in a trustee suggesting a refusal by the trustee to suffer an action to be brought in his name, . . .	141	152
to a bill exhibited by an infant where no next friend is named,	148	157
to a bill of interpleader because it does not show any claim of right in the defendant,	145	155
to a bill of interpleader because the plaintiff shows no right to compel the defendants (whatsoever rights they may claim) to interplead,	146	156
to a bill of interpleader for want of the necessary affidavit,	147	156
to part of bill only,	135	147
to bill of review,	153	159
to a bill of review and supplemental bill,	152	158
to supplemental bill,	151	158
to a bill where the plaintiff claimed under a will, and it was apparent on the face of the bill that he had no title,	149	157
to an indictment or information,	511	490
to a plea in bar,	513	491
to part of the bill, or to the relief,	128	144
verification of demurrer,	133	146
Disclaimer,	217	196
Discontinuance,	377	339
Entry discharging jailer	536	507
ordering discharge of prisoner,	518	501
of distribution upon payment of fine,	522	495
the finding of the court,	627	500

Equity—

	FORM	PAGE
affidavit of service of notice,	256	216
to be annexed to a bill of interpleader,	105-7	113
to obtain a <i>ne exeat</i> ,	239	206
amendment to answer,	236	204
to bill,	235	203
<i>answers in equity.</i>		
accounts (reference to book containing them), .	189	181
refused, as being useless, before decree, . . .	190	181
admission for purposes of the suit,	191	181
of an executrix submitting to act under the in-		
demnity of the court,	207	187
of the executors of a deceased acting executor to a		
bill of revivor,	208	188
of a widow electing to take the bequests made to		
her by a will, and to release all interest in the		
devised estates,	209	190
to a bill charging infringement of a patent, . . .	210	191
claim of benefit of same defense to amended, as		
to original bill,	206	187
claims made by defendant,	192	182
craving leave for greater certainty,	193	183
to refer to codefendant's answer,	194	183
commencement of,	176	177
by an infant,	178	177
by husband and wife,	179-80	177
by a lunatic or idiot, etc.,	182	178
by wife separately, under an order,	183	178
where the bill misstates the names of defendants,	181	178
where there is only one defendant to an original		
bill,	177	177
conclusion of,	187	180
first paragraph of,	184	179
by a formal party who is a stranger to the facts,	185	179
by an infant,	186	179
information and belief,	195	183
ignorance,	196	184
qualified denial,	197	184
reference to schedule,	198	184

Equity—Continued.

	FORM	PAGE
release, craving some benefit as if pleaded, . . .	199	185
settled accounts, claim of,	200	185
submission by trustees to act,	201	185
traverse,	202	185
trustee, desire to be discharged,	203	186
vexatious suit; settled accounts; claim of benefit		
of defense, as if raised by plea or demurrer, . . .	204	186
verification of answer,	188	180
want of interest in plaintiff; craving some benefit		
as if defense by demurrer,	205	186
appearance,	222	199
attachment to compel answer,	228	201
<i>bills in equity.</i>		
affidavit to,	85	53
against an agent for mismanagement,	108	114
an executor by legatees and the administrator of		
a deceased legatee,	95	77
by husband of legatee against executor,	93	72
by an executor and trustee under a will to carry		
the trusts thereof into execution,	96	80
caption and address of,	67	45
charging part of,	72	47
commencement of,	68	45
by other than an individual,	69	46
confederating part of,	71	46
creditor's bill against a corporation and its stock-		
holders to enforce statutory liability,	87	56
by simple contract, creditors against executors		
of deceased debtor for payment of his debts, . . .	86	54
for dissolution of a partnership,	88	60
foreclosure of mortgage,	90	65
for an account of partnership dealings after a dis-		
solution, and for a receiver,	89	63
formal parts of a bill, (see below).		
interrogating part of,	74	48
introduction to,	68, 69	45, 46
jurisdiction clause of,	73	47
oath to,	85	53
of interpleader (old English form),	103	109

Equity—Continued.

	FORM	PAGE
of review for new matter,	119	135
of review to examine and reverse a decree, . . .	117	133
of revivor and supplement where both parties in original bill are deceased,	116	131
of revivor (before decree) by the administrator of the plaintiff in the original suit,	115	129
on behalf of infant legatees,	94	74
prayer for injunction in,	77	50
for the production of deeds, papers, etc., in, . .	78	50
for process where the government is a defend- ant in,	81	52
for relief in,	75, 76	49, 50
for subpoena in,	79, 80	51
for writ of <i>certainari</i> in,	83	52
for writ of <i>ne exeat</i> in,	82	52
to bill of interpleader,	194	112
signature of,	84	53
stating part of,	70	46
supplemental bill,	110	119
against the assignee of a bankrupt defendant, .	111	125
in a patent case,	113	127
to an original and amended bill filed by a les- see for the specific performance of an agree- ment to grant a further lease,	11	126
to cancel decree of naturalization,	101	103
a written instrument, (a bill of exchange), . .	97	84
to enforce a lien against a distillery,	102	108
specific performance of a contract to make a policy of insurance,	98	89
to enjoin the obstruction of a river,	100	100
to have goods redelivered which have been de- posited as a security for money lent,	91	68
to perpetuate testimony,	114	127
to redeem by purchaser of an equity of redemp- tion from the assignee in insolvency of the mortgagor,	92	69
to reform a policy of insurance,	99	95
to set aside a decree obtained by fraud,	121	139
to suspend a decree,	120	137

Equity—Continued.

	FORM	PAGE
verification to,	83	53
bond upon a <i>ne exeat</i> ,	242	207
contempt proceedings,	283	230
cost bill,	285	231
cost bond,	221	199
<i>decrees in equity.</i>		
dismissing bill,	268-69	221
of dismissal without prejudice, stating reasons,	270	221
for specific performance of agreement for policy		
of insurance,	272	224
appointing special master,	274	225
for sale,	262	219
<i>pro confesso</i> ,	225	200
<i>pro confesso</i> sustaining patent,	226	201
rescinding contract for fraud,	271	222
<i>demurrers in equity.</i>		
affidavit or oath to a	133	146
and answer,	138	149
certificate of counsel,	134	146
conclusion where the demurrer is to part, or to		
the relief,	131, 132	145
for multifariousness,	143	153
for want of equity,	136	147
for want of jurisdiction in supreme court,	712	675
for want of parties,	142	153
for want of a suggestion that the evidence of		
the plaintiff's demand is not in his power,	140	152
introduction to a demurrer to the whole of the bill	127	144
on the ground of the statute of frauds,	150	157
patent case,	349	323
plea and answer,	139	150
title and commencement,	122-126	143
to bill omitting several grounds,	137	148
to a demurrer to the whole of the bill,	129, 130	145
to a bill brought for part of a matter only,	144	155
to a bill for relief filed by a person beneficially		
entitled where a right of action at law was in		
a trustee suggesting a refusal by the trustee to		
suffer an action to be brought in his name,	141	152

Equity—Continued.

	FORM	PAGE
to a bill exhibited by an infant where no next friend is named,	148	157
to a bill of interpleader because it does not show any claim of right in the defendant,	145	155
to a bill of interpleader because the plaintiff shows no right to compel the defendants (whatsoever rights they may claim) to interplead,	146	156
to a bill of interpleader for want of the necessary affidavit,	147	516
to part of bill only,	135	147
to bill of review,	153	159
to a bill of review and supplemental bill,	152	158
to supplemental bill,	151	158
to a bill where the plaintiff claimed under a will, and it was apparent on the face of the bill that he had no title,	149	157
to an indictment or information,	511	490
to a plea in bar,	513	491
to part of the bill, or to the relief,	128	144
verification of demurrer,	133	146
<i>depositions.</i>		
certificate at close of	260	218
certificate at close of depositions <i>de bene esse</i> ,	25	17
commencement for	259	217
commencement for depositions <i>de bene esse</i> ,	24	17
notice to take,	253-255	214
notice to take <i>de bene esse</i> ,	22	16
transmission of,	26	18
<i>exceptions.</i>		
for scandal	214	194
taken to the answer of a defendant to an amended bill	213	194
to answer for insufficiency,	211, 212	192
to libel,	216	195
to master's report,	215	195
final record in equity,	286	231
injunction <i>pendente lite</i> ,	229	202
letters rogatory,	246, 247	209-10
marshal's appraisalment of real estate,	263	219

Equity—Continued.

	FORM	PAGE
marshal's report of sale,	264	219
<i>master.</i>		
decree appointing master,	274	225
exceptions to master's report,	280	229
final decree on master's report,	281	229
interrogatories for examination before a master,	277	227
master's report,	278	227
notice accompanying draft of master's report,	279	228
for proceedings before master,	276	226
oath of special master,	275	226
reference to a master in special cases,	282	230
motion for additional security for costs,	220	199
for leave to file an amendment,	234	203
to retax costs,	284	230
notice of application for trial,	265	219
of deposition under revised statutes,	254	215
of final hearing,	266	220
of motion for appointment of special examiner,	251	231
of motion for discharge of <i>ne exeat</i> ,	243	208
of oral examination,	253	214
to assign time within which parties shall take evidence,	244	208
to take depositions under 67th rule in equity,	255	216
order appointing special examiner,	252	214
assigning time within which to take testimony,	245	208
extending the time for taking testimony,	250	213
for attachment to compel answer,	227	201
for <i>dedimus potestatem</i> ,	248	210
for writ of <i>ne exeat</i> to issue,	240	206
to show cause why the time for taking testimony should not be extended,	249	213
to stand over to add new parties,	232	203
to stand over to supply proofs,	233	203
petition by infant for appointment of guardian <i>ad</i> <i>litem</i> ,	237	204
by plaintiff for appointment of guardian <i>ad litem</i> for an infant defendant,	238	205
for leave to file a bill of review for new matter,	118	134
for leave to file a supplemental bill,	109	119

Equity—Continued.

FORM PAGE

pleas in equity.

affidavit or oath to a plea,	157	161
certificate of counsel,	158	161
commencement of a plea	155	160
conclusion of a plea,	156	160
plea of an award,	168	168
circumstances bringing a case within the protec- tion of a statute, viz.: the statute of limitations, or the statute of frauds,	169	169
of former suit depending,	164	164
of infancy to a bill exhibited without a <i>prochein</i> <i>ami</i> ,	159	161
of purchase for a valuable consideration without notice,	170	171
of lunacy,	160	162
of stated account,	165	165
of want of interest of defendant,	166	166
of want of proper parties,	171	173
of a will,	167	167
that the defendant never was administrator, . . .	162	163
that the discovery sought by the bill would betray the confidence reposed in the defendant as an attorney,	172	174
that the supposed intestate is living, to a bill where the plaintiff entitled himself as adminis- trator,	161	162
to a bill of revivor,	173	175
to the jurisdiction,	163	163
to part, and answer to residue of bill,	175	176
to supplemental bill,	174	176
the title,	154	160
verification of plea,	157	161
prayer of bill of interpleader,	104	112
precipe for copy,	231	202
<i>pro confesso</i> , consent to take bill,	224	200
decree,	225	200
order to take bill,	223	199
preliminary injunction,	229	202
record in equity,	386	231

Equity— <i>Continued.</i>	FORM	PAGE
replication,	218	197
stipulation to submit cause on printed briefs, . . .	267	220
<i>subpoena duces tecum</i> ,	258	217
in chancery,	219	199
to testify before an examiner,	257	217
temporary injunction,	229	202
writ of attachment to compel answer,	228	201
in equity,	230	202
of <i>ne exeat</i> ,	241	207
Entry discontinuing case,	377	339
Exceptions—		
for scandal	214	194
taken to the answer of a defendant to an amended bill	213	194
to answer	366	338
to answer for insufficiency	211, 212	192
to libel	216	195
to master's report,	215	195
to commissioner's report in admiralty,	616	586
to a libel,	583	502
to a libel pre-emptory,	584	563
Extradition—		
bench warrant for removal (R. S., Sec. 1014), . . .	466	414
certificate of extradition proceedings,	436	412
complaint for warrant,	460	410
final commitment,	462	412
proceedings where offender is arrested in one state for offense committed in another state. Before indictment,	464	413
after indictment,	465	
warrant,	461	411
Fee bill of commissioner,	467	416
Fieri Facias,	47	32
Final commitment,	523	496
in extradition,	462	412
<i>mittimus</i> ,	444	398
recognizance for appearance before circuit or dis- trict court,	442	396

Habeas Corpus—

FORM PAGE

affidavit of petitioner,	525	499
appeal to the circuit court of appeals,	529	501
entry allowing appeal,	531	503
finding of the court,	527	500
order discharging prisoner,	528	501
petition of assignment of errors on appeal,	530	502
for writ of <i>habeas corpus</i> ,	524	497
writ of <i>habeas corpus</i> ,	526	500

Habeas corpus ad testificandum,	21	15
--	-----------	-----------

Indictments—

against a retail liquor dealer selling liquor, for not paying special license tax,	494	475
demanding illegal fees of pensioner in violation of Revised Statutes, Section 5485, as amended July 4, 1884,	488	463
embezzling money order and postal funds,	483	453
embezzlement of letters,	482	451
falsely personating another in violation of R. S., Section 5435,	485	456
an officer of the United States,	486	458
forging indorsement on money order,	490	466
forgery—violation of R. S., Sections 5414, 5421, and 5431,	489	465
general form of indictment,	471	419
for perjury,	491	467
making and presenting false claim for pension, etc.,	487	460
making counterfeit coin,	492	472
mailing libelous postal cards,	477	444
lottery circulars,	476	442
obscene letter,	479	447
national bank officer embezzling, etc., funds,	473	422
passing counterfeit money,	493	474
robbing post-office,	480	448
scheme to defraud—misuse of mails (insurance company),	475	438
stealing personal property of the United States,	484	455
taking obscene pamphlet from the mail,	478	446
using mails concerning scheme to defraud,	474	433
violation of postal laws,	481	450

	FORM	PAGE
Injunction. (<i>See "Perpetual" and "Preliminary."</i>)		
bond,	63	42
in patent cases,	64	43
<i>pendente lite</i> ,	229	202
Information (criminal),	496	476
admiralty,	498	478
libel of—seizure of a distillery,	490	478
seizure under the revenue laws,	497	476
Joinder in error ,	660	617
to demurrer,		
to a demurrer to a plea,	514	492
Judgment ,	670	624
in customs law case,	721	682
error to state court,	665	621
Justification of sureties (admiralty),	590	567
on a bond,	36	23
Law, suit at—		
answer,	7	9
appearance,	11	12
by defendant in person,	13	12
for special pleading,	12	12
application for review and reversal of decisions of the board of general appraisers under the customs law,	8	10
caption,	2	7
for depositions <i>de bene esse</i> ,	24	17
certificate at close of depositions,	25	17
complaint,	2-7	9
cost bill,	28	20
declaration by an alien against a citizen of the United States,	5	8
by a copartnership against a copartnership,	4	8
by a corporation against a corporation,	3	8
by an individual against an individual,	2	7
for an infringement of a copyright or trademark,	10	12
for infringement of a patent,	408	361
by the United States,	6	9
demand of oyer,	17	14
depositions,	24	17
<i>habeas corpus ad testificandum</i> ,	21	15

Law, suit at—Continued.

	FORM	PAGE
notice to declare,	15	13
for examination of witness <i>de bene esse</i> ,	22	16
of motion for leave to amend,	16	13
to plead,	14	13
to reply,	18	14
of taxation of costs,	27	19
of trial,	19	15
petitions,	2-7	7
pleadings in suits at law,	7	9
subpœna of witness <i>de bene esse</i> ,	23	16
of witness to testify before a commissioner,	20	15
transmission of the depositions,	26	18
<i>writs in law and equity.</i>		
attachment bond,	50	34
<i>capias ad respondendum</i> ,	34	23
citation to appellee,	59	40
to defendant in error,	60	41
cost bond,	36	23
<i>dedimus potestatem</i> ,	38	25
<i>feri facias</i>	74	32
injunction bond,	63	42
in patent cases,	64	43
marshal's appraisal of real estate,	45	29
report of sale of real estate,	46	31
notice to surety,	37	24
order for sale,	44	29
for delivery of personal property,	42	28
recognizance for appearance,	35	23
return of writ by marshal,	32	22
of order for the delivery of personal property,	43	28
rule to show cause,	49	34
<i>scire facias</i> to revive a judgment,	53	36
<i>subpœna duces tecum</i> ,	40	26
for witness,	39	26
in chancery,	33	22
summons at law,	29	21
<i>teste</i> for writs issuing from a district court,	30	21
for writs issuing from the supreme court, a circuit court of appeal, or a circuit court,	31	22

Law, suit at—Continued.

FORM PAGE

undertaking in attachment,	50	34
<i>vendi exponas</i> ,	48	33
writ of assistance,	57	38
of attachment,	51	35
of attachment against witness for disobeying subpœna,	41	27
in admiralty,	55	37
of <i>certiorari</i> ,	65	43
of attachment for contempt,	52	36
of error to the U. S. supreme court,	58	39
of injunction,	61	41
of injunction in patent cases,	62	42
of <i>ne exeat republica</i> ,	66	43
of possession,	57	38
of seizure	54	37
of venire for jury,	56	38

Letters rogatory, 246, 247 209-10

Libels—

against consignee for freight on a bill of lading,	564	540
against master for assault and beating or imprison- ment,	567	543
against merchandise for possession,	550	520
against vessel for repairs,	538	509
against owner for wages,	563	540
by mariner for wages,	539	510
by mariner for wages after ship has left port,	542	513
by mariner for wages without written contract,	541	512
for wages on a boat on navigable rivers and lakes,	544	514
for wages on discharge before beginning voyage,	543	513
by insurers for loss by collision,	555	531
by a part owner against his partner for security for building of a ship,	560	538
for damage by collision,	554	528
for lockage in a public navigable river,	566	542
for pilotage in extraordinary danger,	547	517
for pilotage under state regulations,	546	516
for pilotage to sea,	545	215
for salvage,	552	523
for supplies,	561	539

Libels—Continued.

	FORM	PAGE
for supplies with attachment clause,	562	539
for the nonfulfillment of a contract for transporta- tion of goods,	549	519
for wharfage (<i>in rem</i>),	548	518
for wharfage (<i>in personam</i>),	565	541
general form of libel of information,	571	547
<i>in rem</i> ,	537	508
of libel <i>in rem</i> and <i>personam</i> ,	569	545
<i>in personam</i> ,	556	535
with prayer for attachment of goods, etc.,	557	536
with prayer for monition,	558	537
interrogatory clause in prayer,	559	537
intervening libel,	570	546
on a bottomry bond against the vessel, freight and cargo,	553	526
to enforce decree of court of admiralty of another district,	568	544
schedule to be attached to libel for wages,	540	512
Mandate ,	605, 696	637
in admiralty,	632	596
to jailer to produce prisoner,	457	407
Marshal's blanks—		
account current of U. S. marshal,	765	718
affidavit of salaried officer of the government for actual expenses,	769	724
bond of deputy marshal,	759	714
certificate of wages of guard of prisoner,	764	718
as to executions,	757	713
claim of juror for fees,	755	711
commission of deputy marshal,	758	713
deputy marshal's report in criminal case before United States commissioner,	766	719
deputy marshal's report to the United States mar- shal,	767	720
notice to appear as witness,	752	709
oath of special deputy marshal,	760	715
of supervisor of elections,	761	715
order to pay witness fees (pay roll),	756	712
return of marshal of service of subpoena,	753	710

Marshal's blanks—Continued.

	FORM	PAGE
schedule of fees,	763	716
of fees for deputy marshals,	768	722
summons for jurors,	754	710
voucher and receipt for bailiff's criers, etc., fees,	762	716
for fees and expenses of deputy marshal,	770	725
Marshal's appraisal of real estate,	45	29
report of sale of real estate,	46	31
Marshal's return of <i>certiorari</i>,	654	612

Master—

decree appointing master,	274	225
exceptions to master's report,	280	229
final decree on master's report,	281	229
interrogatories for examination before a master,	277	227
master's report,	278	227
notice accompanying draft of master's report,	279	228
for proceedings before master,	276	226
oath of special master,	275	226
reference to a master in special cases,	282	230
report in patent case,	404-406	355

Monition and attachment,	598	572
---	-----	-----

Motion for additional security for costs,	220	199
--	-----	-----

for leave to file an amendment,	234	203
for rule against jailer to show cause, etc.,	522	504
in arrest of judgment,	521	495
service by publication,	716	678
to dismiss,	687	633
to dismiss for want of jurisdiction,	711	674
to dismiss or affirm,	688	633
to set aside decree <i>pro confesso</i> in a patent case,	370	353
to quash indictment,	503	485
to remand,	651	610
to retax costs,	284	230

Naturalization—

affidavit for certificate of naturalization,	750	707
for first papers,	748	705
certificate of naturalization (final papers),	751	708
naturalization of an alien under eighteen years,	747	704
declaration of alien under eighteen years,	746	703
of intention (first papers),	749	706

	FORM	PAGE
Notice for examination of witness <i>de bene esse</i>,	22	16
for publication in admiralty,	624	591
for publication in equity,	718	679
of appeal in admiralty,	629	594
of application for removal on account of local prejudice,	642	604
of application for trial,	265	219
of deposition under revised statutes,	454	215
of appraisement,	620	588
of final hearing,	266	220
of motion,	625	592
of motion for appointment of special examiner,	251	231
of motion for discharge of <i>ne exeat</i> ,	243	208
of motion for leave to amend,	16	13
of motion to remand,	650	610
of oral examination,	253	214
of removal,	641	603
of submission of motions,	686	632
of taxation of costs,	27	19
of trial,	19	15
to appraisers,	618	587
to assign time within which parties shall take evi- dence,	244	208
to declare,	15	13
to plead,	14	13
to surety,	37	24
to take depositions under 67th rule in equity,	255	216
to reply,	18	14
Oath and approval of bond on removal,	638	602
by corporation to a libel or answer,	586	564
by proctor to a libel or answer,	588	565
of foreman of grand jury,	469	418
of grand jurors,	470	418
of agent or attorney in fact to a libel or answer,	587	564
of appraisers,	619	587
to libel or answer,	586	563
Orders,	714	676
and decree where the court has no jurisdiction,	678	628
allowing writ of error,	661	617
appointing appraisers,	617	587

Orders—Continued.

	FORM	PAGE
appointing special examiner,	252	214
assigning time within which to take testimony, . . .	245	208
dismissing cause for failure to print,	691	635
dismissing cause under rule,	602	635
dismissing cause on motion filed,	689	634
dismissing cause on call,	690	634
extending the time for taking testimony,	250	213
for attachment to compel answer,	227	201
for decree <i>pro confesso</i> ,	397	352
for <i>dedimus potestatem</i> ,	248	210
for delivery of personal property,	42	28
for mandate in admiralty,	631	595
for removal,	640	603
for removal on the ground of local prejudice, . . .	644	606
for sale,	44	29
for service by publication,	717	279
for transfer to trustee,	622	588
for writ of <i>ne exeat</i> to issue,	240	206
granting leave to amend answer and set up additional defenses,	370	338
granting permission to intervene and defend, . . .	348	322
of court on the return of mesne process <i>in rem</i> , . .	612	584
of distribution,	720	681
of poor convict,	458	408
on petition for writ of <i>certiorari</i> ,	699	654
remanding cause,	652	610
to pay witness,	449	401
to show cause why the time for taking testimony should not be extended,	249	213
to stand over to add new parties,	232	203
to stand over to supply new proofs,	233	203

Patents.

appearance,	368	338
amendment,	369	338
answers.		
general form,	354	330
alleging imperfect specification,	356	333
abandonment,	363	336
defective specification,	357	334

Patents—Continued.

	FORM	PAGE
invention by another person,	364	336
limitation of claims of patent by proceedings in the patent office,	360	335
limitation of duration of patent by a prior for- eign patent,	365	336
denying assignee's right to sue,	355	333
grant of licenses and public acquiescence, . .	361	335
plaintiff's title,	362	336
prior adjudication,	359	334
utility,	358	334
<i>bills of complaint.</i>		
bill in equity for infringement of a patent, . . .	339	307
in the nature of a supplemental bill. Allegation when patent has been assigned pending suit, . . .	344	313
setting forth prior adjudication,	343	312
to cancel an interfering patent,	346	314
to compel issue of patent,	346	317
where an assignment of the patent has been made before bringing the suit,	340	311
where a reissued patent is sued upon,	341	312
where the suit is brought by the administrator of a patentee,	342	312
<i>contempt.</i>		
entry of distribution,	396	354
motion for rule to show cause, etc., for contempt, .	389	347
order granting motion for contempt,	390	348
adjudging defendant guilty of contempt and fining him,	393	349
adjudging party guilty of contempt (another form),	394	349
fining defendant for contempt	395	350
return of rule by marshal,	392	348
rule to show cause,	391	348
cost bill,	375	339
decree, final,	407	360
dismissing bill	400	353
<i>pro confesso</i>	398	352
sustaining patent	401	353
demurrer,	349	323

Patents—Continued.

FORM PAGE

depositions,	373	339
<i>de bene esse</i>	374	339
entry discontinuing case	377	339
exceptions to answer,	366	338
injunction <i>pendente lite</i> . (See " <i>Preliminary Injunction.</i> ")		

law, suits at.

declaration for infringement after expiration of		
patent,	408	361
plea. General issue,	410	363
and notices of special matter,	411	363
replication,	412	366
verification to declaration,	409	363
limiting the time within which to take evidence,	372	339
master,	403	355
master's report,	404, 406	355
motion to set aside decree <i>pro confesso</i> ,	399	353
order for decree <i>pro confesso</i> ,	397	352
granting leave to amend answer and set up addi-		
tional defenses,	370	338
granting permission to intervene and defend,	348	322
petition of manufacturer to intervene and defend		
its vendee,	347	320
perpetual injunction,	402	353
plea setting up the defense of a license and set-		
tlement of a prior suit,	352	326
setting up defense of prior suit,	351	320
setting up defense of license from patentee,	350	324
to jurisdiction,	353	329

preliminary injunction.

affidavit of service of notice,	379	340
bond in lieu of preliminary injunction,	385	344
motion to dissolve preliminary injunction,	186	345
notice of motion for preliminary injunction,	878	339
order for preliminary injunction,	382	341
granting motion to dissolve injunction and sub-		
stituting bond for injunction,	388	345
overruling motion,	380	341
overruling motion to dissolve,	387	345

Patents—Continued.	FORM	PAGE
to show cause why injunction should not issue,		
etc.,	381	841
refusing injunction upon defendant giving bond,	384	343
preliminary injunction,	483	342
replication,	367	338
security for costs,	371	338
stipulation to submit cause on brief,	376	339
temporary injunction. (See " <i>Preliminary Injunction.</i> ")		
Perpetual injunction,	402	353
Petition against proceeds in the registry,	574	554
against proceeds in the registry against the claimant,	575	555
appeal,	671	625
appeal in admiralty,	630	594
at law,	2-7	7
by infant for appointment of guardian <i>ad litem</i> ,	237	204
by plaintiff for appointment of guardian <i>ad litem</i>		
for an infant defendant,	238	205
for limitation of liability,	572	548
for leave to file a bill of review for new matter,	118	134
for leave to file a supplemental bill,	109	119
manufacturer to intervene and defend vendee,	347	320
removal because of the subject-matter of the suit,	636	600
by one or more of several defendants when there		
is a separable controversy,	637	600
on account of local prejudice,	643	604
on the ground of citizenship,	634	598
by revenue officer in a civil action,	647	608
by revenue officer indicted for murder,	645	606
of criminal case from a state court,	495	475
to bring in vessel under rule 59,	573	553
writ of <i>certiorari</i> to circuit court of appeals,	697	640
of error,	657	614
of <i>habeas corpus ad testificandum</i> ,	516	493
of <i>habeas corpus</i> ,	524	497
of prohibition,	705	661
Pleas—		
affidavit or oath to a plea,	157	161
certificate of counsel,	158	161

Pleas—*Continued.*

	FORM	PAGE
circumstances bringing a case within the protec- tion of a statute, viz.: the statute of limitations, or the statute of frauds,	169	169
commencement of a plea,	155	160
conclusion of a plea,	156	160
general issue in a patent case,	410	363
and notices of special matter in patent case, . .	411	363
in supreme court,	713	675
<i>nolo contendere</i> , journal entry on,	515	492
of an award,	168	168
of a will	167	167
of former jeopardy (acquittal),	510	490
of former jeopardy (conviction),	509	489
of former suit depending,	164	164
of infancy to a bill exhibited without a <i>prochein</i> <i>ami</i> ,	159	161
of lunacy,	160	162
of misnomer,	504	487
of purchase for a valuable consideration without notice,	170	171
of stated account,	165	165
of want of interest of defendant,	166	166
of want of proper parties,	171	173
replication to a,	506	487
setting up the defense of a license and settlement of a prior suit,	352	326
setting up defense of a prior suit,	351	320
setting up defense of license from patentee, . . .	350	324
special,	507	488
that the defendant never was administrator, . . .	162	163
that the discovery sought by the bill would betray the confidence reposed in the defendant as an at- torney,	172	174
that the supposed intestate is living, to a bill where the plaintiff entitled himself as administrator, .	161	162
to a bill of revivor,	173	175
to the jurisdiction,	163	163
to part, and answer to residue of bill,	175	176
to supplemental bill,	174	176

Pleas— <i>Continued.</i>	FORM	PAGE
the title,	154	160
verification of plea,	157	161
verification of,	505	487
Pleadings in suits at law,	7	9
Poor convict—		
application for discharge,	456	407
certificate of discharge,	459	409
mandate to jailer to produce prisoner,	457	407
oath of,	458	408
Precipe for copy,	231	202
Preliminary injunction—		
affidavit of service of notice,	379	340
bond in lieu of preliminary injunction,	385	344
motion to dissolve preliminary injunction,	386	345
notice of motion for preliminary injunction,	378	339
order for preliminary injunction,	382	341
granting motion to dissolve injunction and sub-		
stituting bond for injunction,	388	345
overruling motion,	380	341
overruling motion to dissolve,	387	345
to show cause why injunction should not issue,		
etc.,	381	341
refusing injunction upon defendant giving bond,	384	343
preliminary injunction,	383	342
Preliminary summons for seamen's wages,	627	593
Proclamation on the return of process <i>in rem</i>,	613	584
Pro confesso, consent to take bill,	224	200
decree,	225	200
order to take bill,	223	199
Quarterly statement of receiver,	306	255
Receipt for record,	683	631
Receivers.		
<i>ancillary proceedings.</i>		
affidavit to petition,	326	288
bill, ancillary, for foreclosure of railway,	317	277
<i>in re</i> receivers for a manufacturing company		
where receivers were appointed by a state		
court before a federal court took jurisdiction,	316	270
supplemental for foreclosure of railway,	318	278

Receivers—Continued.

	FORM	PAGE
certified proceedings before magistrate,	328	291
commissioner's report on intervention,	334	300
decree,	337	303
taking ancillary jurisdiction,	319	280
confirming master commissioner's report on in-		
tervention,	335	302
master's report on intervention,	334	300
motion to refer intervention to special master,	329	293
to restrain receivers in accordance with peti-		
tion,	333	300
notice of petition,	324	286
oath of special master commissioner,	321	284
to petition,	326	288
order appointing commissioner to hear and report		
claims,	320	283
ancillary, confirming and directing sale to a re-		
organized manufacturing company,	338	304
granting leave to intervene,	331	298
that receivers give notice to stockholders by		
publication,	323	285
to file amendment, and extending receivership,	322	284
petition for an order authorizing receivers to de-		
liver possession of railway property,	336	302
for order limiting time to present claims, etc.,	325	286
of intervention,	327	289
of intervention (another form),	330	293
of intervention (<i>in re</i> manufacturing company),	332	299
verification of petition,	326	288
<i>original proceedings.</i>		
acknowledgment to assignment by receiver,	313	268
affidavit of insolvency in support of bill,	290	239
appearance and answer,	291	241
assignment by railway receivers of choses in ac-		
tion, etc., on the surrender of the property,	312	266
advertisement of railway foreclosure sale,	314	269
bill by creditor praying the appointment of a re-		
ceiver,	287	233
for an account of partnership dealings and dis-		
solution, and for a receiver,	289	239

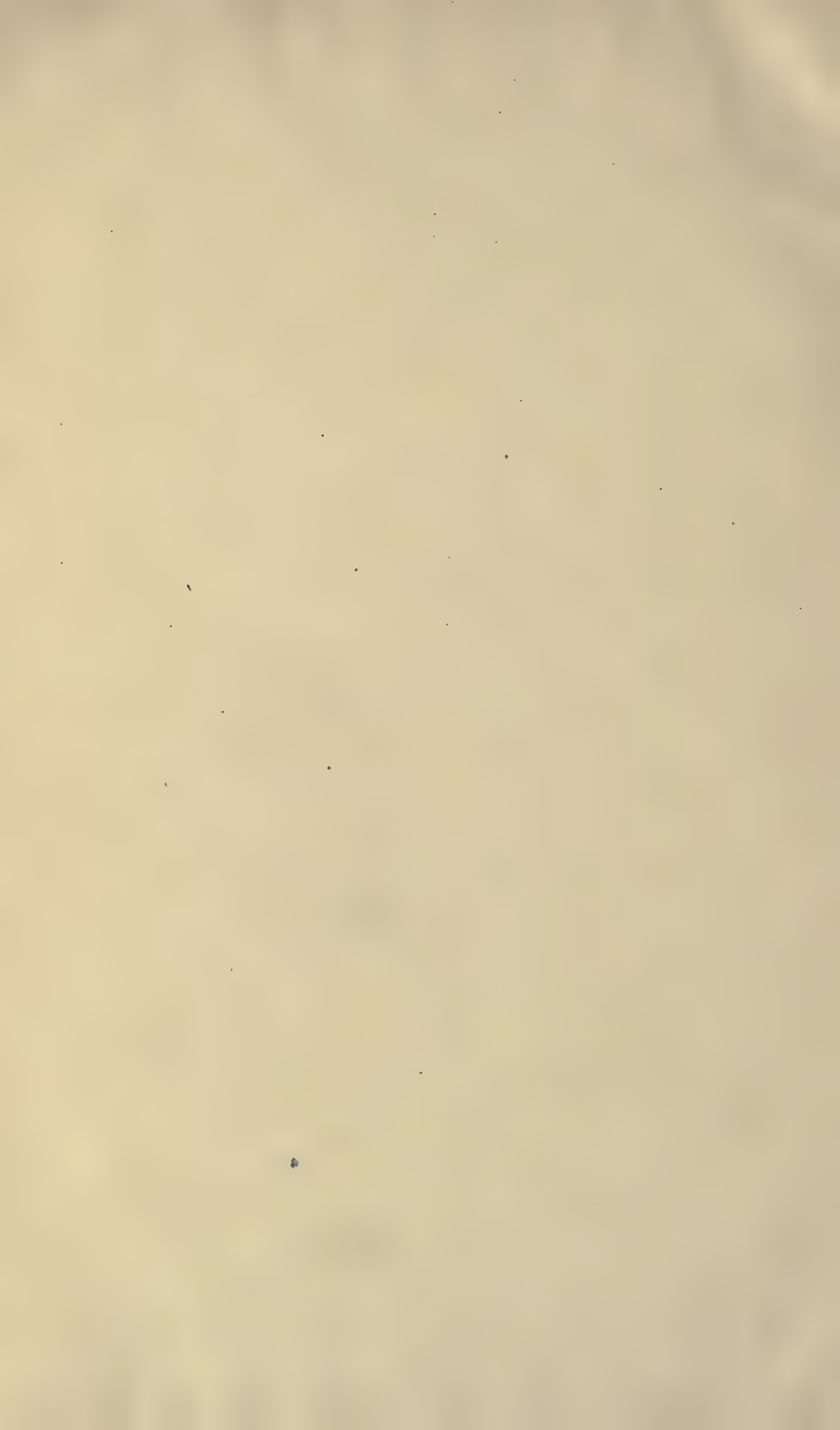
Receivers—Continued.	FORM	PAGE
for the foreclosure of a railway, and appointment		
of receiver,	288	239
bond of receivers,	295	245
certificate of special master to statement of re-		
ceiver,	307	256
decree of foreclosure and sale of a railway, . .	315	269
oath of receiver,	294	245
order appointing receiver for a manufacturing		
corporation,	293	243
appointing receiver for a railway,	292	241
appointing special master commissioner to hear		
and report claims,	304	253
authorizing receiver to settle traffic balances, .	301	251
discharging railway receivers and restoring		
property,	311	259
granting leave to sue receiver,	309	259
to pay claims accruing prior to the appointment		
of the receiver,	305	254
to pay rent,	302	251
requiring defendant to turn over to receivers		
books, plats, and deeds,	299	248
that receivers give notice to stockholders by		
publication,	296	246
petition by receiver for authority to settle traffic		
balance,	300	249
for order limiting time to present claims, etc.,	297	246
for order upon a defendant to deliver to the		
receivers the deed, records, plats, and other		
muniments of title,	298	246
for permission to make a receiver party to a		
suit in a state court,	308	256
intervening,	310	259
of receiver for permission to defend suits and		
compromise claims,	303	252
quarterly statement of receiver,	306	255
Recognizance for appearance,	35	23
for appearance before the court,	501	483
of witnesses,	446	399
Release of sureties,	441	396

Removal from State Courts—	FORM	PAGE
bond on removal,	638	601
certificate of counsel,	649	609
<i>certiorari</i> for removal of a cause from a state court,	653	611
marshal's return of <i>certiorari</i> ,	654	612
motion to remand,	651	610
notice of application for removal on account of local prejudice,	642	604
of motion to remand,	650	610
of removal,	641	603
oath and approval of bond,	639	602
order for removal,	640	603
for removal on the ground of local prejudice,	644	606
remanding cause,	652	610
petition for removal because of the subject-matter of the suit,	636	600
for removal by one or more of several defendants when there is a separable controversy,	637	600
for removal on account of local prejudice,	643	604
for removal on the ground of citizenship,	634	598
of removal by revenue officer in a civil action,	647	608
of removal by revenue officer indicted for murder,	645	606
return of <i>certiorari</i> by the state court,	655	612
verification of petition,	635	599
of petition of removal by revenue officers in civil case,	648	669
of petition of removal by revenue officers in crim- inal case,	646	608
Rogatory letters,	246, 247	209
Replication at law,	412	366
general form,	218	197
to claim and answer,	614	584
to special plea,	508	488
Report of appraisers,	621	588
Return by clerk of writ of error,	666	621
by marshal of <i>mittimus</i> ,	445	397
of <i>certiorari</i> to the state court,	655	612
of order for the delivery of personal property,	43	28
of service or subpœna on a state,	704	660
of writ by marshal,	32	22

	FORM	PAGE
Rule for jailer to show cause, etc.,	534	505
to show cause,	49	34
to show cause why writ of prohibition should not issue,	708	673
Scire facias to revive a judgment,	53	36
Search Warrant (internal revenue),	452	404
under act of July 10, 1891,	454	405
Service of citation ,	675	627
Stipulation by defendant on arrest in an action <i>in</i> <i>personam</i> ,	593	569
for costs by claimant,	592	568
for costs by libellant <i>in personam</i> ,	591	568
for costs by libellant in a suit <i>in rem</i> ,	589	566
for release of vessel,	596	571
for the safe return of a ship,	594	569
reducing record,	681	630
to submit cause on printed briefs,	267	220
Subpœna duces tecum ,	40	26
for witness,	39	26
for witnesses (criminal practice),	447	400
in chancery,	33	22
in a suit by one state against another,	703	660
of witness <i>de bene esse</i> ,	23	16
of witness to testify before a commissioner,	20	15
Suggestion for writ of prohibition ,	707	665
Summons at law ,	29	21
(preliminary) for seamen's wages,	627	593
Supreme Court. <i>appellate jurisdiction</i> (see " <i>Appellate Proceedings</i> "). <i>original jurisdiction.</i> answer in the supreme court,	709	716
bill by foreign counsel against a citizen of the United States,	700	655
by one state against another to settle the bound- ary,	701	655
for the settlement of a boundary between states (another form),	702	656
demurrer for want of jurisdiction,	572	674
motion to dismiss for want of jurisdiction,	711	674
orders and decrees,	714	676

Supreme Court—Continued.	FORM	PAGE
petition for writ of prohibition,	705	661
plea,	713	675
return of service of subpœna on a state,	704	660
rule to show cause why writ of prohibition should not issue,	708	673
subpœna in a suit by one state against another, .	703	660
suggestion for writ of prohibition,	707	665
verification of a pleading in the supreme court, .	710	674
of petition,	706	665
writ of prohibition, petition for,	705	661
suggestion for,	707	665
Surety to bond, justification of,	36, 440	23, 395
Temporary injunction,	226	202
<i>mittimus</i> from court,	502	484
<i>mittimus</i> from commissioner,	442	367
recognizance,	439	394
Teste for writs issuing from a district court,	30	21
for writs issuing from the supreme court, a circuit court of appeal, or a circuit court,	31	22
Trademarks (See "Copyrights.")		
Transcript from commissioner,	450	402
Transfer to trustees,	623	590
Transmission of the depositions,	26	18
Undertaking in attachment,	50	34
Venire for jury,	56	38
Verdict, guilty,	518	494
guilty to part of the counts only,	519	495
not guilty,	520	495
Verification of answer,	85-188	146-80
of bill,	85	53
of declaration,	409	363
of demurrer,	133	146
of petition in supreme court,	706	665
of petition of removal,	636	599
of petition of removal by revenue officers in civil case,	648	609
of petition of removal by revenue officers in a crim- inal case,	646	608
of plea,	133	146

	FORM	PAGE
Verification—Continued.		
of pleadings. (<i>See</i> "Oath.")		
of a pleading in the supreme court,	716	674
of writ of <i>certiorari</i> ,	698	654
Warrant of arrest,	438	394
of restitution,	597	575
Writs—		
in admiralty,	55	37
in equity,	230	202
of assistance,	57	38
of attachment,	51	35
of attachment to compel answer,	228	201
of <i>certiorari</i> ,	65	43
of <i>certiorari</i> to circuit court of appeals,	685	631
of error,	663	619
of error to a state court,	664	620
of error to the U. S. supreme court,	58	39
of <i>feri facias</i> ,	47	32
of <i>habeas corpus ad testificandum</i> ,	517	494
of <i>habeas corpus</i> ,	526	500
of injunction,	61	41
of injunction in patent cases,	62	42
of <i>ne exeat republica</i> ,	66	43
of possession,	57	38
of prohibition, petition for,	705	661
of <i>scire facias</i> to revive a judgment,	53	36
of seizure in admiralty,	600	574
of seizure in revenue cases,	54	37
of venire for grand jury,	468	418
return of,	32	22
<i>teste</i> for,	30, 31	21
<i>vendi exponas</i> ,	48	33



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